

A GUIDE TO  
THE ASSESSMENT ACT



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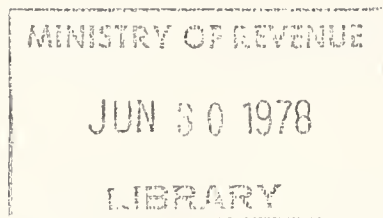


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## A GUIDE TO THE ASSESSMENT ACT

### Introduction


A Guide To The Assessment Act is a two-part document which highlights the prominent sections of The Assessment Act.

The first part, "Assessment Case Digest Abridgement," deals with each section as it is interpreted by case law. The pertinent section of the Act is quoted in italics and is followed by relevant cases with headnotes outlining the court's decision. For handy reference purposes the section dealt with is listed at the top centre of the page. This part of the guide is really a reflection of the larger and more complete Assessment Case Digest found in all regional office libraries. The Digest contains an expanded sectional index as well as complete summaries.

The second part, "Commentary On The Assessment Act," briefly explains the most frequently used sections of the Act. It is compiled in a topical format; for example, it deals with large subjects such as "Liability to Taxation" which are subdivided into smaller topics - Tenant occupied crown lands, special purpose properties, etc. A special feature of this section includes a chart which lists the most common businesses and the percentage to be applied to each.

It should be pointed out that the two parts have their own page numbering systems which are not related in any way.

A Guide To The Assessment Act is not intended to be an authoritative legal document. The information contained herein represents interpretations made by Standards Branch personnel. It is designed only to provide some guidelines to



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field personnel. All final reference should be made to the particular case or Act concerned.

Any inquiries or comments may be directed to:

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Toronto, Ontario.

Telephone 965-3305





**I      ASSESSMENT    CASE**

**DIGEST   ABRIDGEMENT**



1. In this Act,

- (k) "land", "real property" and "real estate" include,  
 (ii) all trees and underwood growing upon land.

Ontario-Minnesota Pulp and Paper Co. Ltd. v.  
Township of Atikokan (H.C.J. July/62)

Timber-licence - provisions of licence give appellant an interest in the timber only after its severed from soil - "trees" to be interpreted to mean those still standing - held: rights under timber licence not real property.

- (iv) all buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,

The Assessment Commissioner for the Municipality of Metropolitan Toronto v. Eglinton Bowling Co. Limited. (C.A. Sept/57) O.R. (1957) 622

Bowling alleys - whether alleys properly assessed as land - held: real property

Re: Ford Motor Co. and Town of Ford City (S.C.C. Jan./29) (1929) 2 D.L.R. 109

Gantry crane - whether chattel and not liable for assessment, held: gantry crane not real property.

Georgetown Cable T.V. Limited and The Assessment Commissioner, Halton Peel Assessment Region (C. Ct. May/71)

Cable T.V. Wires - intended to remain for duration of their utility - held: assessable as fixtures.

Greenmelk Company Limited v. The Township of Chatham (C.A. June/55) O.W.N. (1955) 757, 761

Tanks - used for preserving animal food - held: real property

The Hamilton Harbour Commission and The Corporation of The City of Hamilton (C.J. July/63)

Gasoline pumps and tanks - held: real property



Dennis Hill - Hill's Mobile Village and The Assessment Commissioner for The United Counties of Stormont, Dundas and Glengarry, Region #1 (C.J. Feb./70)

Mobile homes - two trailers joined together and placed on cement blocks - held: real property

The City of London v. John Labatt Limited (C.A. June/53) O.R. (1953) 800

Tuns and tanks used in manufacture of beer - need not be affixed to realty to come within definition of real property - requisite intention of permanence met.

Rodney John Lyons and the Corporation of Town of Meaford, and the Regional Assessment Commissioner (C. Ct. Jan./76)

Freezers, walk in coolers - whether easily assembled/ dismantled walk in coolers real property - held: real property

Northern Broadcasting Co. v. Improvement District of Mountjoy (S.C.C. May/50) (1950) 3 D.L.R. 721

Broadcasting equipment - permanency - whether transformer and transmitter used for broadcasting purposes are machinery - whether machinery merely placed on land falls within the definition of land - held: transmitter and transformer are machinery; heavy equipment which has been set in a particular place with idea of permanency is land.

Ontario-Minnesota Pulp and Paper Co. Ltd. v. Township of Atikokan (No. 2) (H.C.J. Dec./62) O.R. 1963 Vol. 1 179

Bunk houses and sheds - of temporary nature used in timber cutting - held: not real property

Sawmill and buildings used in connection therewith - held: real property

Douglas Perrin and the Corporation of The Township of Murray (O.M.B. July/71)

Mobile homes - intention of owner and permanence of use relevant - held: real property

Richmond and Richmond vs. Ashton (H.C.J. Nov./61) O.R. (1962) 49

Washing and drying machines - installed for commercial use - intended to remain fixed to realty - held: real property



Frederick Rupert, Marilyn Rupert, et al, and Sault Ste. Marie Board of Education and Regional Assessment Commissioner, Region No. 31 (D.C.J. Sept./74)

Mobile homes - located on lands improved for the effective use of the mobile units - held: the retention of the wheels on the home unit indicates a denial of any intention to place the unit in a locality but rather an expression of an intention that the unit should be moved at the whim of the owner - not real property

Warren Bituminous Paving Co. Ltd. v. Corporation of Township of Otonabee (H.C.J. Oct./62) O.R. 1963 Vol. 1, 29

Asphalt manufacturing plant - can be readily dismantled - appropriate test whether chattels intended to remain for so long as they are used for the purpose for which they were placed on the premises - held: real property

(r) *"tenant" includes an occupant and the person in possession other than the owner;*

City of Chatham and Township of Raleigh (H.C.J. Sept./64) O.R. 1965 Vol. 1 168

Tenant - airport manager residing on the premises and operating an airport under an agreement with city - whether the agreement is a lease - rules relevant to a determination of the meaning of tenant discussed





Delta Parking Systems Ltd. and Township of Toronto 48 D.L.R. (2d) 130; O.R. 1965 Vol. 1 380

Crown parking service - company compensated by way of a management fee - extent of Crown's control such that company's occupation is in fact occupation by the Crown - held: not a tenant

Uday Singh and City of Sudbury (D.Ct. Mar./75) (H.C.J. Div. Ct. Dec/76) 8 O.R. (2d) 377

Tenant - whether members of a religious congregation using portions of a private residence for religious and educational purposes are tenants - held: to occupy means to take possession and it would be taking the meaning too far to say that the congregation occupies the premises in question

Stinson vs. The Township of Middleton, Wright vs. The Township of Middleton (C.A. Jan/49) O.R. 1949

Tenant - whether employees of a Crown owned experimental farm who reside upon the property are tenants - case law bearing on occupation as a tenant reviewed and guiding rules for determination of the question enumerated - held: where employees are required to reside upon the property as a term of employment and deductions from salaries bear no relation to rentable value, the employees are servants of the Crown and not tenants

3. *All real property in Ontario is liable to assessment and taxation, subject to the following exemptions from taxation:*

Yin-Tso Hsiung v. Toronto (H.C.J. May/50) 4 D.L.R. (1950) 209

Consulate - property belonging to a foreign government - principle of International Law that property is immune from taxation - held: assessor has no jurisdiction to assess the land

3. *Every place of worship and land used in connection therewith and every churchyard, cemetery or burying ground.*

The Trustees of The Amalgamated Congregation of The First United Church

Place of worship - whether a parking lot and field is "used in connection" with a place of worship - members of the congregation of a nearby church use the parking



lot - case law reviewed - held: notwithstanding use of the parking lot by the public, the parking lot is exempt - the vacant field is not exempt

Re: Melville Presbyterian Church Manse (C.J. Nov./26)  
O.W.N. XXXI 187

Manse, Minister's residence - whether used in connection with a place of worship - held: exemption confined to church edifice or place of worship - not exempt.

The Presbyterian Church Building Corp. and Assessment Commissioner for Territorial District of Algoma (D.J. June/73) (H.C.J. July/74) 3 O.R. 1973 1007; 4 O.R. (2d) 773

Place of worship - whether a church which is vacant and for sale qualifies under the exemption - held: exempt

Uday Singh and City of Sudbury (D. Ct. Mar./75) (H.C.J. Div. Ct. Dec./76) 8 O.R. (2d) 377

Place of worship - whether rooms of a private residence set aside for use by a religious congregation are within the meaning of place of worship - held: rooms are a place of worship

Les Soeurs de la Visitation d'Ottawa v. The City of Ottawa (H.C.J. Dec./51) O.R. (1952) 61

Manse - buildings and cultivated lands occupied by a religious order - held: not within designation "used in connection" with a "place of worship" - test of exclusive use applied

Toronto General Burying Grounds v. Scarborough (H.C.J. June/59) (1959) O.W.N. 277

Cemetery - greenhouses, superintendent and gardener quarters - held: part of the enclosed cemetery property and necessary for its proper and decent operation - exempt

(b) *The exemption from taxation under this paragraph does not apply to lands rented or leased to a church or religious organization by any person other than another church or religious organization.*

Uday Singh and City of Sudbury (D. Ct. Mar./75) (H.C.J. Div. Ct. Dec./76) 8 O.R. (2d) 377

"rented or leased" - whether rooms of a private residence used as a place of worship are rented or leased by the owner of the private residence, i.e. whether congregation members are tenants - congregation does not hold a lease and no rent or valuable consideration is paid - held: lands are not rented or leased - property exempt



4. *The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a university, high school, public or separate school, whether vested in a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, but not if otherwise occupied.*

City of London and Ursuline Religious of the Diocese of London (C.A. Feb./64) 43 D.L.R. (2d) 220; O.R. 1964 Vol. 1, 587

University - college affiliated with university, but has no power to confer degrees itself - held: not a university

Queen's University at Kingston and The Board of Governor's of Kingston Hospital and the Corporation of the City of Kingston and The Regional Assessment Commissioner for Assessment Region No. 5 (H.C.J. Feb/75) 8 O.R. (2d) 135

University parking garage - managed and operated by a joint commission composed of persons appointed by the Hospital, the university and the city - held: notwithstanding use by the public and the existence of the joint commission, the right of regulation and control remains in the hospital and the university - garage exempt

St. Andrew's College and Assessment Commissioner for County of York (H.C.J. May/71) 19 D.L.R. (3d) 503.

Boarding School - assessability of staff quarters - staff required by terms of employment to occupy premises in question - held: property exempt

Onus - to be borne by party claiming exemption

Trinity College et al and City of Toronto (H.C.J. Feb./68) O.R. 1968 Vol. 2 24

Residence - off-campus house occupied rent free by college provost - provost not required to live there - held: property not "actually used and occupied" by college - not exempt

York University et al and The Corporation of the Borough of North York and the Assessment Commissioner for the Borough of North York (H.C.J. Oct/76) 13 O.R. (2d) 601.

Exemptions - university - whether lands vested in a university and exempt from municipal taxation (The York University Act, S.O. 1965 c. 143 s. 18) become rateable when the land is leased to various businesses - held: land still vested in the university - exempt.

5. *The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for philanthropic or religious purposes, the whole profits from which are devoted or applied to such purposes, but such grounds and buildings are exempt only while actually used and occupied by such seminary.*





Baptist Convention of Ontario and Quebec and The Regional Assessment Commissioner, Region #17 (D.J. Oct./74)

Seminary of learning - summer camps established to promote the interests of the church among the youth - held: exempt

The Christian Brothers of Ireland in Canada and The Assessment Commissioner for The Counties of Wellington and Dufferin, and The Corporation of The Township of Mono (H.C.J. Mar/69)  
O.R. 1969 Vol. 2 374

Seminary of Learning - surrounding 90 forest acres contribute to atmosphere desirable to religious life - held: property exempt by reason of being used by seminary

The Eastern Canada Synod Lutheran Church in America and Township of Eramosa (C. Ct. Oct/76)

Seminary of Learning - summer camp established to promote religious education among youth - held: exempt

The Eastern Canada Synod Lutheran Church in America, of Kitchener, Ontario and R.A.C. Region #14 (C. Ct. April/77)

Seminary of learning - whether summer camp is being used as a seminary of learning for religious or educational purposes or as a vacation camp with some religious observances and a religious affiliation. - purposes of camp fall short of the legal requirements for exemption held: not exempt

Emmanuel Convalescent Foundation and Township of Whitchurch (C.A. Sept./67) 65 D.L.R. (2d) 48; O.R. 1967 Vol. 2, 676

Seminary of learning - addiction research and assistance - property must be fundamentally devoted to teaching skills or subjects to qualify as a seminary of learning - held: institution in question not exempt

Worldwide Evangelization Crusade (Canada) v. Corporation of the Village of Beamsville et al. (S.C.C. Nov/59) (1960)  
S.C.R. 49; 21 D.L.R. (2d) 8

Seminary of learning - premises used to train missionaries - whether skills taught need be of a higher standard of scholarship - held: correct test under this paragraph not standard of scholarship but whether those in attendance learn to fulfill better the religious purpose to which they are dedicated - property exempt

6. *The buildings and grounds not exceeding in the whole fifty acres of and attached to or otherwise bona fide used in connection with and for the purposes of a seminary of learning maintained for educational purposes, the whole profits from which are devoted or applied to such purposes, but such grounds and buildings are exempt only while actually used and occupied by such seminary, and such exemption does not extend to include any part of the lands of such a seminary that are used for farming or agricultural pursuits and are worked on shares with any other person,*





*or if the annual or other crops, or any part thereof,  
from such lands are sold.*

City of London and Ursuline Religious of the Diocese of  
London (C.A. Feb./64) 43 D.L.R. (2d) 220; O.R. 1964 Vol. 1  
587

(see page 7 for comments)



Seminary of learning - portions of property occupied by employees out of convenience - not required to reside on premises by terms of employment - these areas therefore not occupied by college - held: not exempt

Onus - party claiming exemption must bring himself within four corners of exemption clause

Westminster College and City of London (H.C.J. Mar./63)  
O.R. 1963 Vol. 2 25

University residence operated by United Church - whether a seminary of learning by virtue of its providing an atmosphere conducive to the exchange of ideas - no specific training provided - held: not exempt

7. *Every public hospital receiving aid under The Public Hospitals Act with the land attached thereto but not land of a public hospital when occupied by any person as tenant or lessee.*

Queen's University at Kingston and The Board of Governors of the Kingston Hospital and The Corp. of The City of Kingston and The Regional Assessment Commissioner for Assessment Region No. 5 (H.C.J. Feb./75) 8 O.R. (2d) 135

Hospital parking garage - managed and operated by a joint commission composed of persons appointed by the hospital, the university and the city - held: Notwithstanding use by the public and the existence of the joint commission, the right of regulation and control remains in the hospital and the university - garage exempt

Sudbury Hospital Services and the Assessment Commissioner, Region #30 (D. Ct. May/74)

Exemption - hospital linen service - whether a separately incorporated company operating linen service for bona fide hospitals is exempt - held: liable for taxation

York Central Hospital Association and The Corporation of the Township of Vaughan (H.C.J.Oct./71) O.R. 1972 Vol. 1 244; 22 D.L.R. (3d) 632

Hospital staff residence - residents pay rent through salary deductions and residence is elective - whether residents are tenants - notwithstanding above, residents do not have control of premises - held: residents not tenants, property exempt



9. *Subject to section 35, the property belonging to any county or municipality or vested in or controlled by any public commission or local board as defined by The Municipal Affairs Act, wherever situate and whether occupied for the purposes thereof or unoccupied but not when occupied by a tenant or lessee who is liable to taxation, except property of a harbour commission used for the parking of vehicles for which a fee is charged.*

(The cases for 3(9) are listed on page 8.)



City of Chatham and Township of Raleigh (H.C.J. Sept./64) O.R. 1965 Vol. 1 168

Municipal property - airport operated under agreement with municipality by an airport manager residing upon the premises - whether the agreement is a lease - rules relevant to a determination of the meaning of tenant discussed - held: manager is a tenant - property not exempt

The City of Detroit v. The Corporation of The Township of Sandwich West (S.C.C. Mar./70) 10 D.L.R. (3d) 391

Municipal property - land in Ontario held by City of Detroit - not within exemption as Detroit not a municipality within Ontario

Pembroke and Airport Commissioner and The Clerk of The Corporation of The Township of Petawawa and The Regional Assessment Commissioner for Renfrew Region (C.Ct. Oct./71)

Municipal property - aerodrome owned and managed by municipality - whether a public utility as defined by The Municipal Affairs Act and liable to assessment - held: not a public utility - excepting rented portions, property exempt

Toronto Transit Commission v. The Corporation of the City of Toronto (S.C.C. April/71) 18 D.L.R. (3d) 68

Municipal property - lessee with right to occupation - right need not be exercised to meet meaning of "occupied by a tenant or lessee" - held: property not exempt

11. *Every industrial farm, house of industry, house of refuge institution for the reformation of offenders or for the care of children, boys' and girls' home, or other similar institution conducted on philanthropic principles and not for the purpose of profit or gain, but only when the land is owned by the institution and occupied and used for the purposes of the institution.*

Corbrook Sheltered Workshop and Assessment Commissioner of Municipality of Metropolitan Toronto et. al. (H.C.J. April/69) O.R. 1969 Vol. 2 540

Charitable institution - operating a workshop for disabled persons - ejusdem generis rule applied - held: institution not similar to institutions mentioned in exemption clause





Kiwanis Club of Toronto and Assessment Commissioner of Metropolitan Toronto et al. (H.C.J. April/67) O.R. 1967 Vol. 2 223

Service club - operating recreational club for under privileged children - does not provide "care" within meaning of section - ejusdem generis rule - held: not exempt

Les Soeurs de la Visitation d'Ottawa v. The City of Ottawa (H.C.J. Dec./51) O.R. (1952) 61

Religious order - stated objects to among other things the performance of devotional exercises and to do useful works and to make ornaments for churches - ejusdem generis rule applied - primary purpose of institution not similar to those enumerated by exemption clause

12. *Land of an incorporated charitable institution organized for the relief of the poor, The Canadian Red Cross Society, St. John Ambulance Association, or any similar incorporated institution conducted on philanthropic principles and not for the purpose of profit or gain, that is supported, in part at least, by public funds, but only when the land is owned by the institution and occupied and used for the purposes of the institution.*

Corbrook Sheltered Workshop and the Assessment Commissioner of Municipality of Metropolitan Toronto et al (H.C.J. April/69) O.R. 1969 Vol. 2 540

Charitable institution - operating a workshop for disabled persons - ejusdem generis rule - held: institution not similar to institutions mentioned in exemption clause

Emmanuel Convalescent Foundation and Township of Whitchurch (C.A. Sept./67) 65 D.L.R. (2d) 48; O.R. 1967 Vol. 2 676

Institution similar to St. John Ambulance Association - whether institution similar - objects of St. John Ambulance Association changed - institution must establish it is similar to that body as constituted in last revised Ontario Statutes

Ina Grafton Homes and Township of East York (C.A. June/63) O.R. 1963 Vol. 2 540

Charitable institution - home for the aged - property vested in United Church in trust for Ina Grafton Homes - the home is only incidental to the purpose of the church - the words "occupied and used for the purposes of the institution" refer to the owner of the lands i.e. the church, not Ina Grafton Homes - held: not exempt



Kitchener-Waterloo and North Waterloo Humane Society and City of Kitchener et al (C.A. Nov./72)

Humane society - not within test of "similarity" required by subsection - use of the term "philanthropy" is restricted so as to exclude organizations devoted to the care and welfare of animals rather than human life.

Markham York Hospital et al and Town of Markham (H.C.J. Feb/76)  
12 O.R. (2d) 238

Charitable Institution - applicants occupying and using land under a 99-year lease - not owners under meaning of exemption - held: not exempt.

The Assessment Commissioner of The Corporation of The Village of Stouffville v. The Mennonite Home Association of York County (S.C.C. Oct./72) (1973) S.C.R. 189; 31 D.L.R. (3d) 237

Charitable Institution - nursing home - to provide care for the aged and to be carried on without the purpose of gain - residents did not have to pass a means test - ejusdem generis rule should not be applied - taxpayer similar to charitable institution organized for relief of the poor - poor is a word of relative meaning and does not only include the destitute

St. Anne's Tower Corporation of Toronto and City of Toronto (H.C.J. Oct./73) 1 O.R. (2d) 717

Charitable Institution - whether ratepayer is "organized for the relief of the poor" or is "a similar incorporated institution" - ejusdem generis rule not to be applied - meaning of the word "poor" discussed - held: property exempt

Les Soeurs de la Visitation d'Ottawa v. The City of Ottawa (H.C.J. Dec./51) O.R. (1952) 61

Charitable Institution- religious order - stated objects to among other things the performance of devotional exercises and to do useful works and to make ornaments for churches - not organized for relief of the poor - not similar to institutions enumerated - held: not exempt

Public funds - to be construed as moneys provided by federal, provincial or municipal governments

14. *The property of every public library and other public institution, literary or scientific, and of every agricultural or horticultural society or association, to the extent of the actual occupation of such property for the purposes of the institution or society.*

The Corporation of The City of Toronto v. Toronto Jewish Library Association (H.C.J. Oct./63)



Public library - whether the term "public" presupposes aid from government - held: there are no specific limitations to the word "public" - "public" in this case refers to "the aggregation of members of the community - property exempt

17. *All machinery and equipment used for manufacturing or farming purposes or for the purposes of a concentrator or smelter of ore or metals, including the foundations on which they rest, but not including machinery and equipment to the extent that it used, intended or required for lighting, heating or other building purposes or machinery owned, operated or used by a transportation system or by a person having the right, authority or permission to construct, maintain or operate within Ontario in, under, above, on or through any highway, lane or other public communication, public place or public water, any structure or other thing, for the purposes of a bridge or transportation system, or for the purpose of conducting steam, heat, water, gas, oil, electricity or any property, substance or product capable of transportation, transmission or conveyance for the supply of water, light, heat, power or other service.*

Alice Hill Park Limited and Assessment Commissioner, Region #4 Renfrew County (C.Ct. Jan./72)

Machinery - "transportation system" - ski-tow incident to use of private property and not a service to the public - held: not a "transportation system"

Alliston Curling Club Inc. and Town of Alliston (C.A. June/64) O.R. 1964 Vol. 2, 251

Machinery - ice-making equipment - changing of water into ice is not manufacturing since it is merely the acceleration of a natural process and not a process which changes the nature and character of the substance so as to constitute a new article

Greenmelk Company Limited v. The Township of Chatham (C.A. June/55) O.W.N. (1955) 757, 761

Machinery - tanks used to store and preserve animal food are machinery used in the manufacturing process

The City of London v. John Labatt Limited (C.A. June/53) O.R. (1953) 800

Machinery - brewery tuns and tanks - equipment need not have moving parts to qualify as machinery used for manufacturing - essentially chemical nature of process not a bar to exemption





Warren Bituminous Paving Co. Ltd. v. Corporation of Township of Otonabee (H.C.J. Oct./62) O.R. 1963 Vol. 1 29

Machinery - conveyor, dryer, elevator, various tanks etc. are machinery used for manufacturing asphaltic concrete

Weyerhaeuser Canada Ltd. and City of Sault Ste. Marie (D.Ct. Dec./67) O.R. 1968 Vol. 1, 460

Machinery - dry kiln and steam vats used in manufacture of lumber and veneer - qualifies as machinery used for manufacturing purposes since it forms an integral part of over-all process of manufacturing from raw material to finished product

*7.-(1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by him as follows:*

Auto Workers (Oshawa) Credit Union Limited and the Corporation of the City of Oshawa (C.J. July/72)

Credit union - not in open competition - profit not prime objective - held: not liable to business tax

Benson and Hedges Canada Ltd. and Bruce Fraser, Regional Assessment Commissioner, Region #16 (Formosa Spring Brewery) (C.J. May/73) (O.M.B. Mar./74)

Conservation/recreation land adjacent to brewery - nothing to prevent sale or change in use - held: not liable to business assessment

Club Roma (St. Catharines) Inc. and the Department of Municipal Affairs, Assessment Branch (C.J. April/71)

Club - non-profit corporation - charges public for use of facilities and all profits donated to charities - held: liable for business tax

Doctor's Hospital v. Corporation of The City of Toronto et al (H.C.J. April/70) O.R. 1970 Vol. 3, 118

Hospital - non-profit corporation - surplus distributed to member physicians - intention to make money important - held: exempt from business tax





Goderich Community Credit Union Ltd. and William U. Vidler, Assessment Commissioner (C. J. Feb/71)

Jurisdiction - liability for business assessment is a question of law - C.J. sitting on appeal from A.R.C. has no jurisdiction to decide

The Goodyear Tire and Rubber Company of Canada Ltd. and Metropolitan Warehouse Company Ltd. and The Corporation of the City of Owen Sound, Region #25 (C.J. May/69)

Occupying and using - warehousing company wholly owned subsidiary of manufacturer - whether manufacturer is occupying and using land of subsidiary - subsidiary has little or no control over its affairs - held: warehouse land occupied by manufacturer

Regional Assessment Commissioner Region No. 7 v. Kent Drugs Ltd. (O.M.B. Nov/76) 6 O.M.B.R. 241

Liability to business assessment - occupying and using - whether shopping centre mall areas used of necessity by ratepayer's customers are in fact, used and occupied by the ratepayer - held: liable to business assessment.

Regional Assessment Commissioner, Region #28, and Koffler Stores Limited and L. Sweig Drugs Limited (O.M.B. July/73)

Franchise - extent of control discussed to determine nature of relationship between franchisor and franchisee - whether principal/agent or licensee/licensor - held: licensee liable for business assessment

Loma Linda Foods (Canada) and The City of Oshawa (H.C.J. Nov/63) O.R. 1964 Vol. 1, 313

Church-promoted non-profit corporation - manufactures and sells vegetarian foods - notwithstanding that the profits are used to promote religious objectives or that the corporation has shown a loss recently, its preponderating purpose is to make a profit - held: liable for business assessment

Maitland Manor and William U. Vidler, Assessment Commissioner (C.J. Feb./71)

Jurisdiction - liability for business assessment a matter of law - C.J. sitting as a provincially appointed tribunal has no jurisdiction

Maple Leaf Services v. Townships of Essa and Petawawa (C.A. Feb/63) O.R. 1963 Vol. 1 475

Non-profit corporation - set up at instance of Minister of National Defence to service Canadian Army personnel - corporation's control over operations and profits considered - dominant purpose - held: not liable for business tax



Lorne Murphy Foods Ltd. and John A. Mowat, Regional Assessment Commissioner, Region #3 (C.A. Nov./71) O.R. 1972 Vol. 1, 559

Catering firm - under contract with government - whether covenants reduce appellant's control of premises to that of agent - specific elements of control discussed - held: liable to business assessment

Toronto v. Ontario Jockey Club (S.C.C. June/34) (1934) 2 D.L.R. 254

Jockey club -an incorporated company - liability for business assessment does not depend on whether business is showing a profit

Oshawa Missionary College and City of Oshawa (H.C.J. Nov./63) 42 D.L.R. (2d) 114

Book-bindery - non-profit corporation - notwithstanding that full-time employees are engaged and competitive with similar commercial enterprises, predominate purpose not the pursuit of profit - held: not liable for business assessment

Queen's University at Kingston and The Board of Governors of the Kingston Hospital and The Corporation of The City of Kingston and the Regional Assessment Commissioner for Assessment Region, No.5 (H.C.J. Feb./75) 8 O.R. (2d) 135

Parking garage - used in connection with hospital and university - will never make a profit - necessary service for efficient operation of hospital and university - held: not liable for business assessment

Re Regional Assessment Commissioner and Caisse Populaire Champlain d'Ottawa Ltee. (C. Ct. July/75) 9 O.R. (2d) 788.

Liability to business assessment - caisse populaire (credit union) ruled exempt from business assessment.

St. Mary's Parish (Kitchener) Credit Union Ltd. and City of Kitchener (C.A. Sept./68) 70 D.L.R. (2d) 676; O.R. 1968 Vol. 2 820

Credit union - notwithstanding profits and competitive nature, corporation not liable for business assessment - preponderating purpose test applied

Stouffville District Credit Union Ltd. and Village of Stouffville (H.C.J. Feb./66) O.R. 1966 Vol. 2. 139

Credit union - distributes dividends and advertises with no reference to restricted membership - preponderating purpose test applied - held: liable for business assessment as a financial business



M.C. Quinn, Regional Assessment Commissioner and the Corporation of the City of Windsor and the Windsor-Essex County Real Estate Board (C.A. Sept./74) 6 O.R. (2d) 22

Real Estate Board - multiple - listing service (M.L.S.) is preponderant activity of Board - M.L.S. in fact makes a profit - held: mere intent to make a profit or lack thereof not the sole test of a commercial activity - all surrounding circumstances relevant - Board is liable for business assessment

York University et al and The Corporation of the Borough of North York and the Assessment Commissioner for the Borough of North York. (H.C.J. Oct/76) 13 O.R. (2d) 601

Liability to business assessment - land vested in a university but occupied by the occupants other than the university for profit and for the purpose of the occupants - held: occupants liable for business assessment.

(b) *Every person carrying on the business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker or any other financial business for a sum equal to 75 per cent of the assessed value.*

The Regional Assessment Commissioner of Brantford, and Maple Leaf Mills Ltd. (O.M.B. Nov./71)

Wholesale merchant - seed division of respondent company buys processed and unprocessed seed and sells it at a profit - processing only a part of business and is merely a prelude to distribution - held: a wholesale merchant

Re Regional Assessment Commissioner and Caisse Populaire Champlain d'Ottawa Ltee (C. Ct. July/75) 9 O.R. (2d) 788

Business Assessment - financial institution - caisse populaire (credit union) ruled exempt from business assessment

Donlands Dairy Ltd. v. The Regional Assessment Commissioner (C.A. Sept./73)

Wholesale merchant - dairy - deals in large quantities, does not change basic nature of product and sells to other than ultimate consumer - held: a wholesale merchant

Merchants Paper Company (Windsor) Limited and The Regional Assessment Commissioner, Region #27, and the corporation of The City of Windsor (O.M.B. Nov./71)

Wholesale merchant - company buys paper products from manufacturers and wholesalers for resale - bulk of sales to ultimate consumer - held: not a wholesale merchant



Stouffville District Credit Union Ltd. and Village of  
Stouffville (H.C.J. Feb./66) O.R. 1966 Vol. 2 139

Financial business - held: credit union liable for  
business assessment correctly classified as a financial  
business





- (c) *Every person carrying on the business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by him, for a sum equal to 75 per cent of the assessed value of the land occupied or used by him in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.*

Brewer's Warehousing Co. Ltd. v. Village of Markham  
(C.A. Feb./63) O.R. 1963 Vol. 2, 79

Distribution premises - premises used for over-the-counter sales and accepting orders for home deliveries which are made from other premises - "distribution premises" to be interpreted with reference to words which follow, i.e., "storage" and "warehouse" - such special use of "distribution" nevertheless a broader use than conducted on appellant's premises - held: not correctly classified as distribution premises

- (d) *Every person carrying on the business of a manufacturer, including the business of a flour miller, maltster, a concentrator or smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such land.*

Village of Delhi v. Imperial Leaf Tobacco Company of Canada Ltd. (C.A. June/49) 1949 O.R. 636

Manufacturer - appellant grades and dries raw tobacco leaf - held: not manufacturing as character of product not changed by process

Jurisdiction - C.A. has jurisdiction to decide whether there is evidence upon which the company can be classified for purposes of business assessment

City of Toronto v. Lever Brothers Ltd. (C.A. June/42)  
(1942) O.R. 421

Manufacturer - operating a "Free Gift Store" where merchandise is exchanged for soap coupons - proper in some cases to look beyond the activities upon the premises to ascertain the real character of the business - held: a manufacturer rather than a retail store



Maple Leaf Mills Ltd. and The Village of Beeton Reg. #16  
(C.J. Mar./72) (O.M.B. - Feb./73)

Manufacturer - silos for storage of grain owned by flour milling company - whether silos "used in connection with" business of a manufacturer - held: land used for flour milling properly classified under 7(1)(d)

Ontario-Minnesota Pulp and Paper Co. Ltd. v. Township of Atikokan (No.2) (H.C.J. Dec./62) O.R. 1963 Vol. 1, 179

Manufacturer - pulp and paper - whether sawmill and buildings connected therewith are used in connection with appellant's business as a manufacturer - held: notwithstanding that sawmill is operated on different premises from those where logs are converted into pulp, sawmill is used for purpose of, or in connection with appellant's business as manufacturer

G. Whitaker & Co. Ltd. and Assessment Review Court Lake Ontario Assessment Area (C.J. May/71)

Manufacturer - whether the operation of cleaning, sorting and blending raw wool constitutes manufacturing - held: that this operation is one of manufacturing as it constitutes the production of articles for use from raw or prepared material by giving to these materials new forms, qualities and properties or combinations whether by hand or by machinery

Ernest R. Williams, Assessment Commissioner for the Town of Burlington and Paletta Brothers Meat Products Ltd(O.M.B.Jan/67)

Abattoir - held: operation of slaughtering and processing cattle for wholesale is manufacturing

*(e) Every person carrying on the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel.*

Famous Players Ltd. and Regional Assessment Commissioner and Corporation of City of Hamilton (C.J. Mar./74)

Partnership - whether a joint venture between "Famous" which has more than five outlets and "Secure" which operates less than five outlets is a partnership - criteria for a partnership discussed - held: joint venture not a partnership - "Famous" occupies subject lands and is correctly assessed as a person carrying on business through a chain of more than five outlets



(f) Every person,

(i) practising or carrying on the business of a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist, podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect and every person carrying on a financial or commercial business or any other business as agent,

Delta Parking Systems Ltd. and Township of Toronto  
(H.C.J. Nov./64) 48 D.L.R. (2d) 130; O.R. 1965 Vol. 1, 380

Agent - Crown parking service - held: agent or servant of Crown not an agent within the meaning of section

(iii) carrying on business as the publisher of a newspaper, of a photographer, lithographer, printer or publisher,

Fritz Schuller and The Regional Assessment Commissioner Region #16 and The Corporation of The Town of Collingwood  
(O.M.B. July/72)

Photographer - whether photographer whose preponderating business is retail sales of photographic supplies is correctly classified as a photographer - held: not a photographer, correctly classified under omnibus clause

(7) Subject to subsection 8, no person shall be assessed in respect of the same premises under more than one of the clauses of subsection 1, and, where any person carries on more than one of the kinds of business mentioned in that subsection on the same premises, he shall be assessed by reference to the assessed value of the whole of the premises under that one of those clauses in which is included the kind of business that is the chief or preponderating business of those so carried on by him in or upon such premises.

Dale Estate Ltd. v. The Town of Brampton (H.C.J. April/53)  
O.R. (1953) 659

Farm, market garden, nursery - where the chief or preponderating business of a ratepayer lies in the sale of cut flowers, flowering plants and florists supplies, whether the ratepayer is liable to business assessment as a wholesale florist - held: a farmer, market gardener or nurseryman does not cease to be a farmer, market





gardener or nurseryman by reason of such sales - clause 7.-(7) does not qualify exemption clause 7.-(10) so as to deny the ratepayer's exemption from business tax

Fritz Schuller and The Regional Assessment Commissioner  
Region #16 and The Corporation of the Town of Collingwood  
(O.M.B. July/72)

Photographer - 75% of sales are retail sales of photographic supplies - whether preponderating business is that of retailer not specifically mentioned or photographer - held: business not specifically mentioned

- (8) *Where a manufacturer also carries on the business of a retail merchant, he shall be assessed as a retail merchant in respect of any premises or of any portion of any premises that are occupied and used by him solely and only for the purpose of such business.*

Molson's Brewery (Ontario) Ltd. and Toronto Assessment Commissioners (H.C.J. Oct./63) O.R. 1964 Vol. 1 217

Brewery with retail beer store on premises - whether brewery is a manufacturer, hence whether retail premises to be assessed separately - held: brewer and manufacturer to be regarded as separate and distinct entities for business assessment purposes - appellant is a brewery - preponderating business is that of a brewery hence whole of the premises to be assessed as a brewery

- (10) *No person occupying or using land as a rooming house, apartment house, farm, market garden, nursery or apiary or for the raising of animals for the production of fur is liable to business assessment in respect of such land.*

Andy Anderson Greenhouses Ltd. vs. City of London (C.A. Oct./64)  
O.R. 1965 Vol. 1, 233

Nursery - ratepayer grows plants and flowers in greenhouses for sale to retailers - held: the operation of planting and growing seeds or cuttings is the business of a nursery whether for transplantation or sale - it is the business that is being assessed and taxed not the sale of the final product - land is being used as a nursery

George Baker and The Municipal Corp. of the Township of McKim  
(H.C.J. May/57)





poultry farm - chickens fed exclusively with purchased feed - held: "farm" is some operation or use of the land itself or some form of husbandry and since same is not carried on by ratepayer his premises are not a farm

Dale Estate Ltd. v. The Town of Brampton (H.C.J. Apr/53)  
O.R. (1953) 659

Market garden - 80 percent of ratepayer's revenue derived from sale of cut flowers and florist's supplies - whether a wholesale florist - held: the intent of this subsection is to exempt primary producers - there is no authority for saying that to constitute a market garden, the produce must be sold at a market in the restricted sense of an assemblage of persons meeting at an appointed time and place - a farmer, market gardener or nurseryman does not cease to be a farmer, market gardener or nurseryman by reason of sales - other relevant criteria discussed - property exempt

The Regional Assessment Commissioner, Region No. 11 and The Corporation of the Borough of Scarborough and Environ Properties Limited (H.C.J. Div. Ct. Nov/76)

Liability to business assessment - rooming house - whether a 'retirement centre' which supplies lodging, meals, furnishings and other services is a rooming house within the meaning of s7(10)(a) - held: exempt from business assessment.

*17(3) The value of an assessment of an entire parcel of real property that is occupied by more than one person to be assessed under this Act shall be apportioned on the assessment roll among the occupants of the entire real property who are to be assessed in that proportion that the fair market rent of the space occupied by each occupant bears to the fair market rent of the entire parcel of real property so that the sum of the values apportioned to each occupant shall be equal to the value of the assessment of the entire parcel of real property.*

Regional Assessment Commissioner Region No. 7 v. Kent Drugs Ltd. (O.M.B. Nov/76) 6 O.M.B.R. 241

Apportionment - fair market rent - business assessment - whether appurtenant common mall areas included for business assessment - held: liable for business assessment determined on fair market rent basis.

*24(1) Subject to section 26, land shall be assessed against the owner thereof and against the tenant to the extent of the assessed value of the portion of the land occupied by the tenant.*

Warnick v. The Township of Sherbrooke (C. Ct. April/56) (1956)  
O.W.N. 713.

Assessment - Separate interests - tenant builds house on leased land - held: no separate assessment of different interests.



26.-(1) Notwithstanding paragraph 1 of section 3, the tenant of land owned by the Crown where rent or any valuable consideration is paid in respect of such land and the owner of land in which the Crown has an interest and the tenant of such land where rent or any valuable consideration is paid in respect of such land shall be assessed in respect of the land in the same way as if the land was owned or the interest of the Crown was held by any other person.

Delta Parking Systems Ltd. and Township of Toronto (H.C.J. Nov./64) 48 D.L.R. (2d) 130; O.R. 1965 Vol. 1, 380

Crown parking service - company compensated by way of a management fee - extent of Crown's control such that company's occupation is in fact occupation by the Crown - not a tenant - held: exempt

Maple Leaf Services v. Townships of Essa and Petawawa (C.A. Feb./63) O.R. 1963 Vol. 1 475

Tenant - non-profit corporation serving interests of Army personnel and dependants in army camps under a licence agreement with the Crown - held: a bare licensee to whom no interest in land passes is not assessable

Rent or any valuable consideration - covenant to insure against fire and pay all taxes, not "rent or any valuable consideration" - rent must be reserved to the lessor himself, and not to a stranger - nominal consideration of one dollar cited in agreement does not constitute "rent or any valuable consideration" - rent means a real compensation, a profit



Court House Theatre Holding Foundation and The Regional Assessment Commissioner, Region #18 and The Corporation of Niagara-On-The-Lake (H.C.J. Oct./74) 6 O.R. (2d) 168

Rent or any valuable consideration - non-profit corporation occupying Crown land under a lease - whether rent paid is nominal inasmuch as it bears no relation to the true market value of the land - held: what is nominal depends on the circumstances; here the reservation of \$100/year is not merely inadequate but is not real or substantial and accordingly nominal - not "rent or any valuable consideration"

27.-(1) *Subject to this section, land shall be assessed at its market value.*

(2) *Subject to subsection 3, the market value of land assessed is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.*

Robert H. Beach, Regional Assessment Commissioner and Toronto Golf Club (O.M.B. June/72)

Golf club - highest and best use - where development of the subject lands is either imminent or expected within a reasonable time, it is appropriate to use the market value of built-up surrounding lands to assess the lands for development purposes - where the "highest and best use" is for golf course use, the market value of built-up surrounding land should not be the basis for valuing the subject lands

Brampton Golf Club Ltd. and the Corporation of The Town of Mississauga (C.A. March/72) O.R. 1972 Vol 2, 816; 26 D.L.R. (3d) 696

Golf Club - method of assessment - proper test involves a two-fold appraisal: one based on use as a golf club including the value of buildings and improvements; the other based on redevelopment value in which little or no allowance is made for buildings or improvements - the highest of these should represent the value of the property for assessment purposes - where assessment is based upon use of the lands for a golf club, certain factors lending additional value to the land may be considered; e.g. comparable golf club sales and location

Downtown Oshawa Property Owners' Association et al and R.A.C., Region No. 13 and The Corporation of The City of Oshawa (O.M.S. Nov/72) (C.A. June/76) 13 O.R. (2d) 492

Market Value - commercial valuation - shopping centre - whether properties are restricted to mere physical comparison or may be compared with properties of the same general nature, character or function - held:



comparison must take into account the general nature, character and function of similar properties and not be restricted solely to physical characteristics: (cf. York Condominium No. 26 551 West Mall and Assessment Commissioner for Borough of Etobicoke, (1972) 1 O.R. 492.)





Empire Realty Co. and Assessment Commissioner for Metropolitan Toronto, et al (C.A. May/68) O.R. 1968 Vol. 2 388

Method of assessment - distinctions between "prestige" and "utility" buildings and hypothetical rents for owner occupied space employed by assessor to calculate "economic value" - ratio of assessment to assumed gross rentals roughly the same as similarly calculated ratios for similarly classified buildings nearby - no attempt made to determine actual value - held: equity of assessment to be apparent - method of assessment employed by assessor not shown to produce an equitable assessment

Onus - notwithstanding that the ultimate onus of establishing error rests upon the appellant, when the assessor admits he has departed from the method of assessment statutorily prescribed, i.e. where he has not used "normal market value", the intermediate onus of going forward with the evidence is upon the assessor to prove that the method he has adopted has resulted in an assessment which will result in the same distribution of tax burden as would have maintained if the assessment had been made strictly as required by the Act.

A. Merkur & Sons Limited and R.A.C., Region No. 14 and The Corporation of the Town of Aurora (O.M.B. April/76) 6 O.M.B.R. 1

Commercial Valuation - Shopping Centre - Income method - economic rents - contract rents - owner's and tenants' interests - cost method - O.M.B. found that "the income approach is the proper approach for determining the market value of a shopping centre and that in determining the income, actual rents ought to be considered insofar as they reflect the market for the year in question." - market rent approach used by assessor to corroborate cost method:- held assessment equitable with similar properties.

The Regional Assessment Commissioner, Region #14, v. Office Specialty Ltd. and the Township of East Gwillimbury (S.C.C. Oct./74) 49 D.L.R. (3d) 471

Method of assessment - where a property is not for sale and not likely to be offered for sale, whether replacement cost method is a suitable procedure to arrive at an assessment - held: to determine "actual" or "market" value, an assessor has to regard the owner as a possible purchaser or estimate what he would expend on a building to replace that which is being valued - replacement cost method is appropriate in this case

Toronto v. Ontario Jockey Club (S.C.C. June/34) (1934) 2 D.L.R. 254

Race track - highest and best use - race track land assessed on the basis of its potential value as a subdivision in accordance with evidence as to the highest and best use - held: buildings not to be



valued for the purposes of a race track - buildings  
correctly assessed on the basis of their value for  
demolition purposes

Ormedent Limited and B. J. Fraser, Regional Assessment Commissioner,  
Region #16, and the Corporation of the City of Orillia (O.M.B.  
Jan./73) (see top of pg. 23 for comments on case)



Prestige building - method of assessment - landlord and tenant not at arm's length - held: income approach not reliable in this case - manual not adequate for prestige building - obsolescence is a factor in computing cost of construction as it relates to assessed value

Owl Realty Ltd. and The Corporation of the Township of Pickering, and Owl Realty and the Regional Assessment Commissioner, Region #13 and The Corporation of the Township of Pickering (O.M.B. Sept./72)

Shopping Plaza - held: it is proper to take into account a potentially better mix of store uses in a shopping plaza to arrive at a market value assessment

Stevens Building Limited v. The City of Sudbury (C.A. May/73)

Income approach - actual v. comparable rents - held: income must be calculated on the basis of current market rents for comparable premises rather than the actual rents under a lease

Montreal v. Sun Life Assurance Co. of Canada (P.C. Nov./51) (1952) 2 D.L.R. 81

Method of assessment - ornately constructed office building for which there is no actual market - held: actual value means market value - the correct approach to a determination of market value utilizes the willing buyer and willing seller principle - where there is no actual market, the owner may be considered a potential buyer in a supposed exchange - the price the owner would pay should not be calculated as the subjective value to him but upon ordinary objective principles

York Condominium No. 26 551 The West Mall and The Assessment Commissioner for the Borough of Etobicoke (C. CT. Oct/71) O.R. 1972 Vol. 1 492; (O.M.B. Feb/73) 2 O.M.B.R. 91.

Multi-Res. Valuation - Condominium - similar real property means "same general nature or character" not necessarily physical construction - high rise condominiums have greater similarity to residential freehold property than to multi-res high rise rental apartments.



- (3) *For the purposes of subsection 2, in ascertaining the market value of farm lands used only for farm purposes by the owner thereof or used only for farm purposes by a tenant of such an owner and buildings thereon used solely for farm purposes, including the residence of the owner or tenant and of his employees and their families on the farm lands, consideration shall be given to the market value of such lands and buildings for farming purposes only, and in determining such market value consideration shall not be given to sales of lands and buildings to persons whose principal occupation is other than farming.*

(see page 24 for cases)





Cyril Clark and the Assessment Commissioner for the County of Peel and the Corporation of the Township of Chinguacousy (O.M.B. April/70)

Farm assessment - effect of speculative sales - held: comparables for sales analysis should not be drawn from sales in the vicinity which have been influenced by speculative factors

Louis and Marie Devald and R.A.C. Region No. 16 (C.A. Jan/77)

Farm Valuation - Similar/vicinity - farmland used intensively for truck farming purposes has the "same general nature, character or function and is not limited to similarity of physical attributes or of use..." as other farm properties in the township.

John R. Emmons and the Town of Pelham (C.J. Oct./72)

Nursery - held: use of land as a nursery is a specialized type of farming but nonetheless farming and subject to farm assessment

The Regional Assessment Commissioner, Region #6 and Richard, Eleanor and Jill Fuke (O.M.B. Sept./74) 4 O.M.B.R. 30

Farm land - whether 2 or 3 acre holding of land, zoned residential and planted with a crop, is a farm under the Act - held: not a farm

Gibson, Dyanne and James and Assessment Commissioner, Region #25, Township of Euphrasia (O.M.B. June/75)

Bush and swamp land - whether bush and swamp land contiguous to a farm, both parcels being owned by the same person, should be assessed as a farm - held: no use is being made of the land and it is therefore not used "only for farm purposes" - not a farm

The Corporation of the Township of Innisfil and Christie Clark (O.M.B. Aug./64)

Hobby farm - whether wooded property contiguous to a farm, both parcels being owned by the same person, should be assessed as a farm - primary purpose of acquisition and economic value of wood removed considered - held: wooded property not assessable as a farm

The Corporation of the Town of Oakville and Sheridan Hills Developments Ltd. (O.M.B. Nov./72)

Farm land - land subject to a "Farm Lease" being held in anticipation of future development - no activities conducted on the land - held: not a farm



County Assessor for Ontario County and Runnymede Investment Corporation Ltd. (C.A. Nov./65) (1966) 1 O.R. 577

Farm land - speculative land holding - whether an investment company which acquired vacant land zoned "industrial" for speculative and investment purposes, and which farms the land, is entitled to be assessed as a farm - held: land should be assessed as a farm - no consideration should be given to purchase price paid

Thomas J. Ryder, Regional Assessment Commissioner, Region #5 and Alma Sargent (O.M.B. Aug./71)

Farm land - land registered on plan for a subdivision - held: notwithstanding a possible increase in the actual value of the land due to registration, land is still used for farm purposes and properly assessed as a farm

Rudolf Schwandt and Irmgard Schwandt and L. V. Wilton, Assessment Commissioner for the County of Lincoln and the Corporation of the Township of Caistor (C.J. Feb./69)

Christmas tree farm - held: whereas Christmas tree farming would warrant a farm assessment, the amount of clearing and cultivation on this property is not sufficient to warrant classification as a farm

Philip Sternbauer and The Regional Assessment Commissioner, Region #27 and the Corporation of The Township of Sandwich South (O.M.B. Nov./71)

Farm land - airport lands under restricted cultivation - whether lands limited to crops related to bird control are lands "used only for farm purposes" - held: notwithstanding "control" for airport purposes, land is assessable as a farm

Vloet v. The Township of Canboro (C.J. March/56) O.W.N. (1956) 401

Farm lands - 4 acre tract of land used for raising tomatoes, strawberries and asparagus - held: whether lands are "farm lands" depends not on acreage but on the use to which the land is put - assessable as a farm



32.-(1) The property by subclause v of clause k of section 1 declared to be "land" that is owned by companies or persons supplying water, heat, light and power to municipalities and the inhabitants thereof, and companies and persons operating transportation systems and companies or persons distributing by pipe line natural gas, manufactured gas or liquefied petroleum gas or any mixture of any of them shall, whether situate or not situate upon a highway, street, road, land or other public place, when and so long as in actual use, be assessed at its market value in accordance with section 27.

Alice Hill Park Limited and Assessment Commissioner, Region #4, Renfrew County (C. Ct. Jan./72)

Transportation system - ski-tow incidental to use of private property and not a service to the public - held: not a "transportation" system

35.-(1) In this section,

(b) "public utility" means a public utility as defined in The Municipal Affairs Act and includes parking facilities on land owned by a municipal corporation or by a municipal parking authority established under any general or special Act. R.S.O. 1970, c.32, s.35(1); 1972, c.1, s.104(6)

Pembroke and Airport Commission and the Clerk of the Corporation of the Township of Petawawa and the Regional Assessment Commissioner for Renfrew Region (C. Ct. Oct./71)

Public utility - municipal property - aerodrome owned and managed by municipality - whether a public utility as defined by The Municipal Affairs Act and liable to assessment - held: not a public utility

40.-(1) The assessment commissioner or an assessor, shall, at least fourteen days prior to the completion of the assessment roll, deliver in the manner provided in this section to every person named therein a notice in a form prescribed by the regulations of the sum or sums for which such person has been assessed and such other particulars as are mentioned in the prescribed form, and shall enter in the roll opposite the name of the person the date of delivery of the notice or shall make one or more certificates to be attached to the roll or to any part of the roll certifying the date or dates upon which the notices were delivered, and the entry, certificate and certificates are prima facie evidence of the delivery. R.S.O. 1970, c.32, s.40(1); 1972, c.125, s.12; 1974, c.41, s.13.





*(2) When the person assessed is resident in the municipality, the notice shall be delivered by leaving it at his residence or place of business or by mailing it addressed to him at his residence or place of business.*

The Trustees of The Amalgamated Congregation of The First United Church and The Corporation of the City of Hamilton and A. Forest Thompson, Regional Assessment Commissioner, Region #19 (H.C.J. Nov./72)

Notice of assessment - land previously treated as exempt by assessment office - whether notice to occupier of a change in assessment required - held: presumption of notice not applicable in this case - informal letter stating it was the opinion of the assessment office that lands were no longer exempt did not dispense with the statutory duty as to notice

Ruth Smith and The Corporation of the Town of Whitby (O.M.B. April/63)

Notice of assessment - not in fact delivered to ratepayer due to post office error - whether delivered as required by the Act - held: the notice of assessment is delivered as soon as it is mailed

42.-(1) *If any land liable to assessment or any business assessment, has been in whole or in part omitted from the collector's roll for the current year or for any part or all of either or both of the next two preceding years, and no taxes have been levied for the assessment omitted, the assessor shall make any assessment necessary to rectify the omission and the clerk of the municipality upon notification thereof shall enter the assessment on the collector's roll and such taxes as would have been payable if the assessment had not been omitted shall be levied and collected.*

Re Beaver Lumber Co. Ltd. and City of Ottawa (H.C.J. - Div Ct. Feb/76) 12 O.R. (2d) 314

Portion of Assessment omitted from collector's roll by reason of human or computer error - whether section 42 may be used as a means to correct this type of error - held: land was not omitted from the collector's roll, therefore, S.42 does not apply - proper remedy is S.636(b)(1) (enacted 1972; c.125, s.25) of The Municipal Act, R.S.O. 1970, C. 284. Moreover, since the business tax is dependent on the assessment of the land the municipality has no right to amend the business tax roll under s.42 under these circumstances.





The District Assessor for the District of Cochrane v. Trans-Canada Pipe Lines Ltd. (S.C.C. Oct./71) 14 D.L.R. (3d) 775

Omitted from the collector's roll - compressor facilities became assessable by an amendment to the Act, effective January 1, 1967 - whether assessment of said real property properly entered on 1967 collector's roll as an assessment omitted - held: by the terms of the section there was no land liable to assessment which had been omitted from the collector's roll for 1967

O. James Ross and Elma Ross and J.T. McCann and the Township of Orillia (H.C.J. Mar./76) 12 O.R. (2d) 398

Omitted from the collector's roll - (a) whether ratepayer is liable for taxation for prior years not stated on notice of assessment - held: years must be stated. (b) whether there must be a total omission of both land and building before S.42 applies - held: omission may be applied to any assessable part of land left off roll.

46 (1) - *Except as provided in Section 42 or 43, in every municipality the assessment shall be made annually commencing in the year 1974 and at any time between the 1st day of January and the third Tuesday following the 1st day of December, and the assessment roll of the municipality shall be returned to the clerk not later than the third Tuesday following the 1st day of December in the year in which the assessment is made.*

City of Oshawa and Loblaw Groceteria Co. Ltd. et al (H.C.J. Feb./63) 38 D.L.R. (2d) 216, O.R. 1963 Vol. 1 605.

Assessment roll - res judicatar - a matter settled by judgement does not apply to successive assessment rolls. Each year's assessment roll is a new roll and assessments fixed by previous judgements are not binding on future assessment rolls.

Weissert v. Region 12 Assessment Commissioner and Borough of Etobicoke (O.M.B. Oct/76) 6 O.M.B.R. 196.

Assessment roll - each year's assessment roll is separate and independent of previous assessment rolls - a decision of a prior year is not binding - res judicatar does not apply.



52.-(2) Any person including a municipality or a school board may, within the time limited by subsection 3, give notice in writing,

(a) to the regional registrar of the Assessment Review Court; and

(b) to any other person whose assessment is complained of,

complaining that any other person has been assessed too low or too high or has been wrongly inserted or omitted from the roll and shall give a name and address where notices can be served on him and on any such other person by the regional registrar as provided by subsection 4, and the matter shall be decided in the same manner as complaints by a person assessed with regard to his own assessment. 1971, c.79, s.10, part.

Regional Assessment Commissioner (Region #14 - York) and the Corporation of the Town of Richmond Hill and the Corporation of the Township of Vaughan (C.A. June/71) 20 D.L.R. (3d) 165; O.R. 1971 Vol. 3, 277

Notice of complaint by other person - whether notice complaining that all persons on the assessment roll of the municipality had been assessed too high is valid - held: the notice of complaint must state individually the persons whose assessment the A.R.C. is called upon to decide and in the absence of so doing, the notice is a nullity

(3) A notice of complaint,

(a) to the regional registrar under subsection 1 or 2, shall be mailed to him by ordinary mail; and

(b) to any other person whose assessment is complained of, shall be mailed to him by registered mail,

within twenty-one days after the day upon which the roll is required by law to be returned, or within twenty-one days after the return of the roll in case the roll is not returned within the time fixed for that purpose, and the regional registrar shall immediately transmit a copy of all notices received by him to the assessment commissioner. 1971, c.79, s.10, part; 1974, c.41, s.17(2).

Bruce Fraser, Regional Assessment Commissioner, Region #16 and J. Stollar Construction Limited (O.M.B. Sept./71)



Time for giving notice - held: notwithstanding that notice was postmarked late, it was put in the mailbox in time and was "mailed" as required by the Act

55.-(1) *An appeal to the county judge lies, at the instance of the municipal corporation or a school board, or at the instance of the assessment commissioner, or at the instance of any person assessed or of any municipal elector of the municipality, not only against a decision of the Assessment Review Court on an appeal to that court, but also against any omission, neglect or refusal of that court to hear or decide an appeal. R.S.O. 1970, c.32, s.55(1).*

John Joseph Kelly and Regional Assessment Commissioner,  
Region #25 (C.J. Aug./73)

Jurisdiction - appeal from an ex parte proceeding at the A.R.C. - held: where the A.R.C. dismisses an appeal on the ground of non-appearance, the C.J. has no jurisdiction to hear the appeal - however, where the A.R.C. proceeds ex parte, the C.J. has jurisdiction to hear an appeal from its decision

(2) *A notice of appeal to the county judge shall be sent by registered mail, within twenty-one days of the mailing of the notice under subsection 14 of section 52, by the party appealing to the regional registrar who shall forthwith mail a copy of such notice to the persons to whom notice was given under such subsection 14. 1974, c.41, s.18(1).*

Bruce Fraser, Regional Assessment Commissioner, Region #16  
and J. Stollar Construction Limited (C.A. Feb./72) O.R. 1972  
Vol. 2, 352; 25 D.L.R. (3d) 512

Notice of appeal - whether delivery by personal service rather than registered mail is a nullity - held: this section is procedural and directory only as a convenient method of service and personal service within the time limit is adequate

65.-(1) *Upon a complaint or appeal with respect to an assessment, the Assessment Review Court, county judge or Ontario Municipal Board may review the assessment and, for the purpose of such review, has all the powers and functions of the assessor in making an assessment, determination or decision under this Act, and any such assessment, determination or decision made on review by the Assessment Review Court, county judge or Ontario Municipal Board shall, except as provided in subsection 2, be deemed to be an assessment, determination or decision of the assessor and has the same force and effect.*





(2) A decision of the Assessment Review Court, county judge or Ontario Municipal Board with regard to persons alleged to be wrongfully placed upon or omitted from the assessment roll or assessed at too high or too low a sum is final and binding unless appealed in accordance with the provisions of this Act.

(3) For greater certainty, it is hereby declared that the provisions of sections 52, 55 and 63 respecting appeals are intended to establish machinery for the review of an assessment for the purpose of ensuring the administrative integrity of the assessment roll, and, except as provided in subsection 2, such provisions shall not be deemed to affect the right of any person to apply to a superior, county or district court for a judicial determination of any question relating to an assessment. R.S.O. 1970, c.32, s.65.

Maitland Manor and William U. Vidler, Assessment Commissioner  
(C.J. Feb./71)

Jurisdiction - liability for business assessment a matter of law - C.J. sitting as provincially appointed tribunal has no jurisdiction

Quance v. Ivey and Sons Ltd. (C.A. May/50) (1950) O.R.

Jurisdiction - held: jurisdiction to decide disputed questions of liability to municipal assessment was vested in the Superior Courts of the Province prior to Confederation and continues to be so thereafter - it is not within the competence of the legislature of the Province to vest provincially appointed tribunals, in this case the A.R.C., the C.J. sitting on an appeal from the A.R.C. and the O.M.B., with jurisdiction to decide questions of liability to assessment

66.-(1) The municipal corporation, assessment commissioner or any person assessed may apply by originating notice to the Supreme Court or to the county court of the county in which the assessment is made for the determination of any question relating to the assessment, except a question as to persons alleged to be wrongfully placed upon or omitted from the assessment roll or assessed at too high or too low a sum.

Kitchener-Waterloo and North Waterloo Humane Society and City of Kitchener, et al (C.A. Nov./72) O.R. 1973 Vol. 1, 490

Procedure - Court commented that it is inappropriate to proceed before the C. Ct. in the nature of a new trial where the application is brought by an originating notice of motion under this section - if there are issues of fact, these ought to be disposed of on the trial of an issue





Regional Assessment Commissioner for Assessment Region #14 and Township of Vaughan (C.A. March/71) 18 D.L.R. (3d) 409; O.R. 1971 Vol. 2, 545

Jurisdiction - held: a dispute as to the validity of certain notices of appeal is a "question relating to the assessment" and within the jurisdiction of the C.A.

67. *No action or other proceeding, except an action or other proceeding brought by or on behalf of a municipality for the collection of arrears of taxes, shall be brought in court with respect to an assessment or taxes based thereon,*
- (a) except within sixty days after the day upon which the assessment roll is required by law to be returned, or within sixty days after the return of the roll, in case the roll is not returned within the time fixed for that purpose;*
  - (b) where a complaint with respect to the assessment is made to the Assessment Review Court, except within the time limited for appealing from the decision of the Assessment Review Court to the county court judge;*
  - (c) where an appeal is made from the decision of the Assessment Review Court to the county court judge, except within the time limited for appealing from the decision of the county court judge to the Ontario Municipal Board; and*
  - (d) where an appeal is made from the decision of the county court judge to the Ontario Municipal Board, except within fifteen days after the date of the decision of the Ontario Municipal Board,*

*provided where an appeal is made to the Court of Appeal, no action or other proceeding shall be brought in any other court with respect to the assessment. R.S.O. 1970, c.32, s.67.*

St. Anne's Tower Corporation of Toronto and City of Toronto (C.A. Nov./74) 5 O.R. (2d) 718

Time limit - whether ratepayer's right to bring an application under s.66(1) ceased to be exercisable at the expiration of time limit for appealing from the Court of Revision, or continued to be exercisable until the expiration of 60 days from the return of the roll - held: subsections (b), (c) and (d) of section 67 do not act to abridge, but rather to extend the time period provided by s.67(a) - the Court also commented that a determination by the Court of Revision that it does not have jurisdiction to deal with a complaint is a decision for the purposes of s.67



90. *The Assessment Review Court, county judge, Ontario Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Court, judge, Board or court is satisfied that the assessment is inequitable with respect to the assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.* 1971, c.79, s.13, part.

Downtown Oshawa Property Owners' Association, et al and the Regional Assessment Commissioner, Region #13 and the Corporation of the City of Oshawa (O.M.B. Nov./72) (C.A. July/76) 13 O.R. (2d) 492

Onus - there is an added onus on the appellant by virtue of s.90 to show that an inequity exists in the assessment (O.M.B.) - but S. 90 is not to be applied retroactively to cases under appeal at the time S.90 was introduced (C.A.) - case referred back to O.M.B. Moreover similar real property is not to be confined to physical similarities only.

The Regional Assessment Commissioner, Region #2, et al v. Ontario Steel Products Co. Limited (S.C.C. June/75)

Onus - where the assessor seeks to rely upon s.90 and the assessment is admittedly not at market value, the onus rests on him to establish that the assessment is not inequitable - whether s.90 to be given a retrospective effect discussed

York Condominium No. 26 551 The West Mall and The Assessment Commissioner for The Borough of Etobicoke (C. Ct. Oct/71) O.R. 1972 Vol. 1, 492; (O.M.B. Feb/73) 2 O.M.B.R. 91.

Similar real property - multi-res valuation - similar real property means "same general nature or character" not necessarily physical construction - high rise condominiums have greater similarity to residential freehold property than to multi-res high-rise rental apartments.



THE MUNICIPAL ACT

636(a)-(1) *An application to the council for the cancellation, reduction or refund of taxes levied in the year in respect of which the application is made may be made by any person,*

(f) *liable for business tax who has not carried on business for the whole year, except where the business was intended to be or was capable of being carried on during a part of the year only, or was not carried on for a period of less than three months during the year by reason of repairs to or renovations of the premises in which the business was carried on.*

The Firestone Tire and Rubber Co. of Canada Ltd. and The Corporation of the City of Hamilton (S.C.C. May/55) (1955) S.C.R. 604

Business Taxes - Refund of taxes - strike - whether a manufacturer used and occupied land for the purposes of manufacturing during the period of a forced shut-down due to a strike - held: Activity was still carried on by the manufacturer's office staff. The appellant company failed to show that it was not carrying on the business of a manufacturer.

Systems Dimensions Limited and The Corporation of the City of Toronto (C.J. March/76)

Refund of Taxes, Appeal Procedure - whether 636(1)(f) is the appropriate route to secure relief from taxes based on an incorrect B/A, ratepayer assessed for area not occupied held: clause (f) could not be involved - no business carried on in wrongly assessed area.

Whether court had jurisdiction - held: court had jurisdiction - judicial interpretation existed on the question.



## **II        COMMENTARY    ON**

## **THE   ASSESSMENT   ACT**





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## THE ASSESSMENT ACT

### I. Introduction

#### 1.1. Necessity for Statutory Authority\*

The Assessor, like almost any other government officer, receives his authority and direction from provincial statutes and regulations. While The Assessment Act is the primary source of statutory authority, there are other Acts which concern the assessor - The Municipal Act, The Municipal Affairs Act, The Municipal Tax Assistance Act, to name a few. Generally speaking, anything that the assessor does in his professional role must be governed by some formal authority. Obviously, a broad knowledge of the relevant statutes, regulations and judicial interpretations is essential. In fact, knowledge of assessment law is as important to an assessor as knowledge of appraisal technique.

This is the spirit in which this booklet is offered. Its primary purpose is to be a teaching aid for the Assessment Appeals Training Programme. Its secondary aim is to be a reference guide to the more widely used sections of The Assessment Act. It must be understood that The Assessment Act and related Acts are the final authorities and all questions must ultimately be directed to the relevant Statutes.

#### 1.2 The Emphasis of Assessment - Market Value

##### 1.2.1 What is Assessment?

Very simply, assessment is the valuation

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\*All Acts cited are from R.S.O. 1970 and amendments thereto unless otherwise specified.





of land for taxation purposes however, there are a number of considerations which must be taken into account before the assessor can estimate the value of property. The assessor must deal with the concepts of land, market value and equity.

#### 1.2.2 Land or Real Property

Land/Real property as defined by the Assessment Act:

Section 1 (k) "land", "real property" and "real estate" include,

- i) land covered with water,
- ii) all trees and underwood growing upon land,
- iii) all mines, minerals, gas, oil, salt quarries and fossils in and under land,
- iv) all buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, over, under or affixed to land,
- v) all structures and fixtures erected or placed upon, in, over, under or affixed to a highway, land or other public communication or water, but not the rolling stock of a transportation system;

Although the definition is comprehensive, questions have arisen with regards to what actually constitutes real property. How do we differentiate between real property and chattels?



The courts have used different criteria to solve the problem. For example, permanence of fixtures has been an issue. The case of Northern Broadcasting Limited v. Improvement District of Mount Joy (1950) S.C.R. 502 established that transformers and transmitters placed in a building where a company carried on broadcasting were assessable because they were installed with the intention of permanency even though they were not attached to the building except by their own weight. On the other hand, permanency is not the sole criterion for assessing fixtures. In the case of Ford Motor Co. of Canada and Town of Ford City, (1929) S.C.R. 490 S.C.C. an exemption for a crane that had to be permanently installed in order to operate effectively, was allowed as it in no way benefited or improved the land.

It is important to note that The Assessment Act defines "land" and "realty" as including fixtures. The question in law of what constitutes a fixture is a question of fact in each case. It is very difficult to predict with any certainty whether or not a court will hold a structure to be a fixture in any given situation. Courts consider the intention of the affixer of the structure as determined by each factual situation, the degree of annexation of the object and whether the structure improves the freehold interest. The case of Northern Broadcasting etc. is a situation where the court placed great emphasis on the intention of the affixer.



Most court decisions of this nature have wrestled with the concepts of permanency and whether or not the fixture has improved the land. Fortunately assessability is easily determined in the vast majority of properties with which the assessor has to deal. There is, however, another consideration that governs his valuation - market value.

### 1.2.3 Market Value

Subject to subsection 3, the market value of land assessed is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

- The Assessment Act Section 27 (2) .

Throughout the history of assessment in Ontario, market value or the related actual value has been the standard set by the Legislators whereby property assessment was to be measured. This target was rarely attained for a number of reasons. Prior to 1970 each municipality was responsible for its own assessment function, which resulted in numerous unrelated systems, inequitable assessments and non-uniform assessments. Market or actual value was given lip service only. In light of this, public demand and the courts have called for the uniform standard of market value. The Ontario Government responded by assuming the assessment function with the hope that under the one organization, standardization and market value assessments will be achieved.





Property value has different meanings for different people. Fire insurance companies and mortgagers are interested in the reproduction costs of structures. Taxing authorities, particularly those who deal in capital gains, are interested in the values of properties at given dates. Assessors, on the other hand, are confined to the concept of market value as laid down by The Assessment Act and its interpretation by the Courts. This is illustrated by three important decisions: (1) Sun Life Assurance Co. v. Montreal, [1950] S.C.R. 720 (S.C.C.); (2) Empire Realty Co. v. Metropolitan Toronto, (1968) 2.O.R. 388; (3) The Regional Assessment Commissioner Reg. #14 v. Office Specialty Ltd. and the Township of East Gwillimbury (S.C.C. Oct./74)

The Sun Life case established that whatever method the assessor uses, the results must be approximately the sale price which the property could reasonably expect to bring in an open market transaction between a prudent buyer or investor and a prudent seller.

The Empire Realty case had a very practical implication for assessors. At the time of the decision (1968) very few municipalities were assessing at market value. Empire Realty established that when the assessor departed from market value as the standard, then the onus was on him to demonstrate that the assessment was fair and equitable to the taxpayer in the sense that it resulted in an equal distribution of the tax burden. Market value assessments should remedy this situation because all properties will be assessed by the one standard.



One of the main tools for mass appraisal has been the Replacement Cost New (R.C.N.) approach. Its exclusive use in view of other methods was seriously questioned by the Court of Appeal in the Office Specialty case. The Appeal Court rejected rigid reliance on this method, and its application as set out in the manual. The assessor is not allowed to use the R.C.N. method to simulate value where a market exists. However, in this particular case, there was a dearth of comparables and the Supreme Court of Canada held that Office Specialty itself constituted a market. The assessors' use of the R.C.N.L.D. method was upheld.

The above decisions reflect some of the difficulties assessors face in their appraisal tasks. However, the Legislature and the Courts have adopted market value as the standard. It is the standard that we must use.

#### 1.2.4 Equity

Implicit in the market value approach is the concept of equity. By equity we mean the fair valuation of property in relation to other properties. The idea of equitable assessments is to ensure that the property tax burden is not disproportionately assigned to a specific class of properties or to one area over another. If all properties are assessed at market value then equity will have been achieved in that the properties will not have been assessed beyond their worth. The concept of equity was very clearly brought



home in the case: The Corp's of the Reg. Mun. of Ottawa-Carleton, Twp. of Nepean, et al. and Westmore Interests Ltd.; Minto Construction Co. Ltd.; Irving and Gilbert Greenberg. (O.M.B. Aug./72 - R5774). The point at issue was whether multi-residential properties could be valued in a different ratio to market value than single family residential homes. The County Court Judge and the Ontario Municipal Board held that due to the principle established in the Empire Realty case, i.e., if properties are not assessed at market value then the onus is on the assessor to prove the assessment equitable in relation to the assessments for all other taxpayers, "the assessor has now no leeway to assess different classes of property at a different ratio". The effects of this decision have been mitigated by the implementation of Section 90 which calls for the assessment of comparable real property in the vicinity, however once market value assessments are achieved then equity in assessment should be achieved.

## 2. Assessable Properties

All real property in Ontario is liable to  
assessment and taxation ..... The  
Assessment Act Section 3 .....  
Land shall be assessed at its market value.  
The Assessment Act Section 27 (1).

All lands are assessable. Most lands are taxable.  
However, some lands are exempt from taxation. It is the  
purpose of this chapter to highlight the important sections  
of the Act which deal with liability and exemption.



## 2.1 Liability

### 2.1.1 Tenant Occupied Crown Lands - Section 26

Normally Crown lands are exempt from taxation (S. 3 (1); British North America Act S. 125). However, where an interest is created in Crown lands and held by someone other than the Crown, and where Crown land is rented for valuable consideration, the land is to be assessed in the same way as if the land was owned or the interest of the Crown was held by any other person. Thus, defining an interest or tenancy is critical to the assessment of crown lands. The case of Stinson vs. Middleton, Wright vs. Middleton [1949] O.R. 237 placed heavy emphasis on the extent of control on the part of the occupier vis à vis the Crown. Following this line of reasoning, the case Delta Parking Systems v. Township of Toronto (1965) O.R. vol. 1 page 380, it was held that a tenant or interest-holder of Crown lands used for purposes other than a residence must have exclusive control over the land during the period of occupation before the holder can be assessed. This confirmed that Delta Parking merely managed the parking facilities owned by the Crown at Toronto International Airport. The Company was paid a set fee but was subject to strict Governmental control and had to turn all the profits over to the Crown.





Most of the questions in this area arise as to what constitutes tenancy or assessable interest.

2.1.2 Farm Lands S. 27(3)

For the purposes of subsection 2, in ascertaining the market value of farm lands used only for farm purposes by the owner thereof or used only for farm purposes by a tenant of such an owner and buildings thereon used solely for farm purposes, including the residence of the owner or tenant and of his employees and their families on the farm lands, consideration shall be given to the market value of such lands and buildings for farming purposes only, and in determining such market value consideration shall not be given to sales of lands and buildings to persons whose principal occupation is other than farming.

The assessment of farm lands is an interesting departure from market value for two reasons: (1) highest and best use is not a criterion for determining the market value of farm lands, (2) only comparative sales data that are related to sales between farmers may be used. Section 27(3) has been tested in the courts on several occasions. One case is Clark v. The Assessment Commissioner of the County of Peel O.M.B. P9463-69. This decision reaffirmed the principle that "the agricultural productivity of the land should be the basis for determining the market value of farm land within the meaning of S. 27(3) of The Assessment Act".



Whether the land is bought for speculative purposes or not is irrelevant. If land is used as farm land that is what it is to be assessed for. Highest and best use is not considered until such time as the land ceases to be used for farming purposes.

#### 2.1.3 Woodlands and Orchards S.27(7-9)

The definition and interpretation of woodlands and orchards are given in S. 27(7-9) of the Act.

#### 2.1.4 Special Purpose Properties

A substantial number of properties that are assessed are designed for a unique purpose and are known as special purpose properties. They are "special" for basically four reasons:

- (1) the single and often non-convertible functional character e.g. the supply of heat, water, electrical power and treatment of wastes;
- (2) special purpose properties often require large land holdings;
- (3) these properties are sometimes intermunicipal in nature e.g. telephone companies and pipelines; and
- (4) as a rule, special purpose properties do not demand the same level of social services which is directly proportional to their revenue contributions.

In order to meet the unique requirements of special



purpose properties various rating methods have been devised. They range from statutory rates in the case of pipelines to 'fixed' agreements with golf course owners to market value assessments.

2.1.4.1 Mines - The Assessment Act S.3.19, S.28

Land and buildings (except those located under the mineral lands) which are directly or indirectly involved in mining operations are assessable. These include offices, bunk houses and fire halls. Lands used for smelter or concentrator purposes are assessable and petroleum mineral rights in the lands which have been or are reserved to the grantor are assessable. The above are to be assessed at market value.

2.1.4.2 Golf Courses S.31

The lands and buildings of a golf course are assessable at market value. However, where an agreement exists between the golf course owner(s) and the municipality, municipal and school taxes are paid based on the fixed assessment. Under such an agreement the fixed assessment does not extend to buildings or structures or the land on which they are situated. These are still assessed at market value. The fixed assessment cannot be used as a basis for local improvement taxation.



Most golf course owners have preferred not to enter into a fixed assessment agreement with the municipalities. Thus the lands are assessed at market value and taxed accordingly. This has led to several interesting court decisions in that the principle of highest and best use has been challenged. In the case, Brampton Golf Club Ltd. and the Corp. of the Town of Mississauga O.M.B. R. 2449 June/73, the appellant argued that its lands should only be assessed for golf course use, not highest and best use. The appellant in other words attempted to extend the "Farm Principle" to golf courses; however, the Board held that there was no provision in The Assessment Act for this and ruled the land to be assessed at market value according to highest and best use.

As it stands now golf course lands are to be assessed at market value.

2.1.4.3 Lands of Water, Heat, Power and  
Transportation Companies S.32

The following lands are to be assessed at market value:

- (1) land owned by companies or persons  
supplying water, heat, light and  
power to municipalities and their  
inhabitants.





- (2) lands owned by companies and persons operating transportation systems.
- (3) land owned by companies or persons distributing by pipe line natural gas manufactured gas or liquified petroleum gas or any mixture (qualified by S. 32(2) and S. 33).

"Structures, substructures, superstructures, rails, ties, poles and wires of a transportation system are liable to assessment and taxation in the same manner and to the same extent as those of a railway under Section 38....."

#### 2.1.4.4 Public Utilities S.35

The Provincial Land Tax Act S.13

"Public utility" was defined by The Municipal Affairs Act to mean: "a waterworks, gasworks, including works for the transmission, distribution, and supply of natural gas, electrical power or energy works, or system for the generation, transmission or distribution of electric light, heat or power, a telephone system, a street or other railway system, a bus or other public transportation system or any other works or system for supplying the inhabitants generally with necessities or conveniences that are vested in or owned, controlled by a local board. R.S.O. 1960, c.98 s. 1. (The Department of Municipal Affairs Act section 1 (g) (now The Municipal Affairs Act)

The buildings of a public utility are to be assessed at market value but the assessment of land is based



upon "the assessed value of the land according to the value at which lands are assessed in the immediate vicinity and the assessed value of such buildings would produce" (section 35 (3)).

Privately owned utilities are assessed at market value. The question of what constitutes a public utility arose in Pembroke and Airport Commission and The Clerk of the Corporation of the Township of Petawawa, (Co.Ct. Oct./71). In this case the municipality owned and managed an aerodrome used by private individuals and businesses. The applicant held that the aerodrome should be considered municipal property and therefore exempt from property taxation since it was not clearly defined as a public utility under The Municipal Affairs Act. The County Court judge agreed with this interpretation and ruled that the property be exempted from taxation.

All machinery of public owned utilities is exempt from assessment except in cases where a substructure or superstructure forms an integral part of a building (section 35(10)). But this exemption becomes null and void if any part of any works structure, substructures or superstructures is occupied by a tenant or lessee (section 35(11)). If the tenant or lessee is liable to taxation, the land in question shall be assessed in the same way as if the land was owned by the tenant or lessee (section 3(9)).



2.1.4.5 International, Interprovincial and  
Intermunicipal Bridges and Tunnels  
Sections 36 and 37

In the case of an international or interprovincial bridge or tunnel the part of the bridge or tunnel in Ontario (or in the case of intermunicipal bridges or tunnels, all of the structure) shall be valued as an integral part of the whole. The valuation of interprovincial and international bridges/ tunnels shall also take into account their actual cash value as it would be appraised upon a sale to another company possessing similar powers, rights and franchises and subject to similar conditions and burdens, but subject to the provisions and basis of assessment set forth in subsection 1 of section 32.

2.1.4.6 Transmission Pipelines Section 33  
*The Provincial Land Tax Act S. 70*

A transmission pipeline is one of the few properties that is assessed according to a statutory formula (subsection 4). The items to be included in the assessment are spelled out in subsection (1)(c) and the rate of depreciation is stated under subsection (6). (Suspended by Section 96 (1) until Jan. 1, 1977).

Beyond the transmission pipelines themselves, land and buildings of a pipeline company are liable to assessment at market value. Court decisions have affirmed the assessability of permanent heavy steel wire fences enclosing meter houses and meters which constitute an integral part of a pipeline. The decision suggests that while the meter was by definition a part



of the pipeline and thus could not be separately assessed, this did not apply to the fence, and a separate assessment for it was proper. Trans Canada Pipeline Ltd. and the Township of Winchester Assessor's Review, November, 1960 Page 2.

2.1.4.7 Railways S. 38

The Provincial Land Tax Act S.12

The standards for assessing railway property range from market value to average land value, not to mention a number of exemptions. The types of properties assessed are listed\* under the standard of assessment.

<u>Market Value</u>	<u>Actual Cash</u> <u>Value</u>	<u>Value of Lands in</u> <u>the Immediate</u> <u>Vicinity</u>	<u>Exemption</u>
Vacant land	stations, freight sheds, offices warehouses elevators, roundhouses, hotels, machine & repair shops, -real property not designated in clauses a, b and c (section 38 (2)).	roadway or right of way (excluding structures, sub- structures, and superstructures, rails, ties, poles and other property thereon fixed or upon, in, over, under or affixed to any highway, street or road	structures, substructures rails, ties, poles, wires, and other property on railway lands used exclusively for railway pur- poses or inci- dental thereto

Actual cash value as it pertains to railways means the value of the lands "as they would be appraised upon a sale to another company possessing similar powers, rights and franchises, regard being had to all circumstances adversely affecting the value including the non-user of such property." (Sec. 38(2c)).

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\*This list does not include all the varieties of railway properties and in some instances, the valuations and exemptions are qualified.





2.1.4.8 Telephone, Telegraph and Cablevision  
Companies Section 27; The Municipal  
Act Section 304(a); The Provincial  
Land Tax Act S.11

The lands and buildings of Telephone, Telegraph and Cablevision Companies are assessed as real property at market value in the municipalities where they are situated. The two major differences between telephone and telegraph companies and other types of properties are:

- (1) Under Section 3(20) all machinery and equipment is exempted from taxation.
- (2) In place of this exemption a straight tax of 5% is levied on the gross receipts collected within the municipality.

The most recent addition to the telecommunications field - Cable Television, has presented some problems for assessors. Under the provisions of The Assessment Act the lands and buildings are to be assessed at market value but the problem lies in the assessment of complex and sophisticated equipment. Even the assessment of transmission cables was questioned. In the case, Georgetown Cable T.V. Ltd. and The Assessment Commissioner, Halton-Peel Region (Co.Ct. Halton #676/70 May, 1971) the judge ruled that the applicant's cable which was attached to hydro poles, is real property since it is machinery and is a fixture and therefore assessable for



taxation purposes. However, the larger problem of equipment is still unresolved.

#### 2.1.5. Easements and Rights of Way Section 12.

All easements, rights of way and restrictive covenants are to be assessed in conjunction with the land which they affect.

### 2.2. Exemptions

The exemptions for taxation are legion. *The Assessment Act*, Related Acts, Private Acts and Convention allow for partial or full exemptions. It goes without saying that much of the Assessment-related court activity centres around exemptions.

#### 2.2.1 Crown Properties Section 3(1)

*The British North America Act S. 125*

All lands or property belonging to Canada or any Province are exempt from taxation. However, due to the extensive urban land holdings by the Crown and the increased pressures in municipalities to meet expanding budgets, the Federal and the Ontario governments have made provisions at least in part, to compensate the municipalities. Under *The Municipal Grants Act* (Canada) the Government of Canada pays grants in lieu of taxes on certain classes of property. The classes and values of the properties and the amount of grants are determined by the Federal legislation and Federal appraisers. For many Provincial properties *The Municipal Tax Assistance Act* stipulates that grants in lieu range from payment of moneys equivalent to the general levy, to grants for all levies,



including business assessments. The *Power Corporation Act* which governs Ontario Hydro, sets a statutory rate for Hydro generating stations and makes provisions for grants in lieu of taxes to municipalities (S.47). Lands held by foreign governments in Ontario are generally exempt as they consist mostly of embassies and consulates.

However, there are exceptions. In a Supreme Court of Canada decision, The City of Detroit vs. The Corporation of the Township of Sandwich West 10 D.L.R. (3d) pg. 391, the court ruled that the City of Detroit is a foreign corporation which holds land in Ontario as a lessee from the Crown. It is therefore deemed assessable on two counts: (1) it was not a municipality in Ontario and (2) the appellant is liable for municipal taxation by virtue of being a Crown tenant.

#### 2.2.2. Indian Lands Section 3(2)

Property held in trust for a band or body of Indians is exempt from taxation.

#### 2.2.3 Places of Worship and Cemeteries Sec. 3(3)

Every place of worship and lands used in connection with places of worship are exempt from taxation. Cemeteries are also exempt from taxation, however, lands acquired for cemetery purposes but not immediately required are not entitled to exemption until actually used for such general purposes.



General purposes of a cemetery would include not only grave space, but also walkways, gardens and reservations for future graves. Memory Gardens Ltd. v. Waterloo, (1955) O.W.N. 424. A residence located on the burial grounds and used by employees would be exempt. Toronto General Burying Grounds v. Scarborough (1959) O.W.N. 277.

Lands rented or leased by churches or religious organizations to other organizations are liable for taxation unless these lands are rented or leased by other religious organizations.

The manse or living premises of a clergyman is liable for taxation. In Franchon v. The Corp. of St. Thomas (Co. Ct. Sept. 1861 Law Journal), the judge ruled that the assessment of a priest's residence situated on lands conveyed in trust for a site of a church or burial ground cannot be set aside because the assessor is bound to assess the occupant for his private residence no matter what trust holds the freehold in the land upon which the house stands.

#### 2.2.4 Public Educational Institutions, Philanthropic or Religious Seminaries, Education Seminaries, Section 3.(4, 5, 6)

Public education institutions (universities, colleges, public and separate schools) generally present no real problems to the assessor. Universities and colleges, public, secondary and separate schools have their own Acts exempting them





from taxation. However, when an institution applies for exemption under Section 3 the onus is on the institution to prove itself a bona fide educational institution, i.e., it must have educational purposes that can be defined. In Westminster College and the City of London O.R. 1963 Vol. 2 pg. 25, Westminster College, which was a residence operated by the United Church of Canada on the Western University campus, claimed exemption on the grounds it was an educational institution. Its stated purpose was to provide "an environment conducive to exchanging ideas intellectually stimulating in the sense that there is a rubbing together of points of view". No compulsory courses were offered. The judge ruled that since no clear-cut educational purposes were defined and since it was not training students for anything special, the property was taxable.

Philanthropic or religious seminaries are a different matter. Several cases have been brought before the courts in which religious or philanthropic seminaries have claimed exemptions. A case in point is The Christian Brothers of Ireland in Canada and the Assessment Commissioner for the Counties of Wellington and Dufferin and the Corporation of the Township of Mono O.R. 1964 Vol. 2 Pg. 374. The applicant possessed 140 acres of land and claimed that the property was used for a seminary of learning maintained for religious purposes and thus should be exempt from all taxation under Section 3(5). The respondent argued that the institution was a seminary of learning maintained for educational purposes under (Section 3.6) and thus only 50 acres plus the main residence,



gymnasium and Provincial's residence should be exempt. The High Court Judge ruled that the primary function of the institution was religious not educational. The excess land "contributes to the atmosphere of privacy and serenity desirable to religious life". All 140 acres were ruled to be exempt from taxation. However, in referring to S.3, paragraph 5 of The Assessment Act, the court referred to the meaning of the "occupation" of premises. The court referred to the Re City of London v. The Ursuline Religious of The Diocese of London case, [1964] 1 O.R. 587 and stated that there is a substantial difference between the case where a person is permitted to occupy premises and the case where a person is required to occupy them.

Thus, the court held that the use of the gatehouse, the manager's house and the herdsman's house by parents and visiting guest lecturers was not a matter of necessity but was an advantage by way of convenience and effectiveness and that therefore, these three buildings were not entitled to the exemptions claimed.

2.2.5 Public Hospitals, Highways, Municipal Property, Boy Scouts and Girl Guides and Industrial Farms Section 3. (7, 8, 9, 10, 11)

The above stated properties are for the most part exempt. Two examples will suffice to show the boundaries



of the exemption. The first case deals with a public hospital under section 3.7. In York Central Hospital Association and The Corporation of the Township of Vaughan O.R. 1972 Vol. 1 page 244, the hospital claimed exemption for a staff residence on the grounds it was an integral and indispensable part of the hospital operation. Although the residents paid rent, they were under strict house rules and the occupants had to be hospital employees. The judge ruled that the occupants did not have adequate control of the premises to qualify them within 1 (r) of The Assessment Act and that the operation of the residence was indispensable to hospital efficiency. The residence was declared exempt.

Municipal properties are exempt from taxation under Section 3.9. However, when the lands are leased to a tenant or lessee who is liable to taxation, they cease to be exempt. Property of a harbour commission used for parking vehicles where a fee is charged is exempt from taxation. This usually arises when the land is being used by a tenant commercially. In Toronto Transportation Commission v. Toronto 18 D.L.R. (3d) page 68, the Supreme Court of Canada ruled that "legislative policy would seem to be carried out only if lands are subject to taxation as soon as their use is no longer a use for municipal purposes but becomes a use for commercial purposes." An important point in the case was that the tenant did not physically occupy the land. The court held that since an interest had been created for the developer, the land was liable to taxation.



2.2.6 Charitable Institutions Section 3.12

"Land of an incorporated charitable institution organized for the relief of the poor, The Canadian Red Cross Society, St. John Ambulance Association or any similar incorporated institution conducted on philanthropic principles and not for the purpose of profit or gain, that is supported, in part at least, by public funds, but only when the land is owned by the institution and occupied and used for the purpose of the institution," is exempt.

This is one of the most frequently used sections under which societies apply for exemption.

Two cases will suffice to illustrate the court's thinking on this subject. In the first case Ina Grafton Homes and the Township of East York O.R. 1963 Vol. 2 page 540, the judges ruled that the property formerly owned by Ina Grafton Homes, now vested in the United Church under a statutorily approved agreement is not exempt from municipal taxation because a claim for exemption must be brought strictly within the exempting words of the statute. Although the institution was philanthropic in nature it failed to meet the provisions of the statute on three counts: (1) The institution was not strictly organized for the relief of the poor because it was limited to ministering to the needs of elderly women; (2) It was not a similar institution to the Red Cross Society and the St. John Ambulance Association; and (3) S.3 Para. 12 required that the lands be owned by the institution claiming the exemption. This was not





the case as the United Church of Canada owned the lands not Ina Grafton Homes.

In the Mennonite Home Association of York County v. Stouffville, 1972 S.C.C., the Supreme Court of Canada was somewhat more broad in its interpretation of Section 4 Para. 12 (now 3 Para. 12). The Court granted exemptions on the grounds that the Home was essentially similar to a charitable institution organized for the relief of the poor. In this case the Home was in part supported by public funds (from a government source in this case), and the Home owned and occupied the lands for the sole purpose of the institution's work. The Court said it was proper to look at all three of the specifically mentioned categories of institutions in S. 3 para.12 and not just The Red Cross or the St. John Ambulance to determine whether the association is similar. The differences between the Ina Grafton Homes decision and the Mennonite Home decision are clear.

2.2.7 Children's Aid Societies,  
Scientific or Literary Institutions,  
Battle Sites and Exhibition Buildings  
or Companies

Section 3 Paras. (13, 14, 15, 16.)

The above mentioned properties are exempt from taxation.



2.2.8 Machinery Section 3 (17)

All machinery and equipment used for manufacturing or farming purposes or for the purposes of a concentrator or smelter of ore or metals, including the foundations on which they rest, but not including machinery and equipment to the extent that it is used, intended or required for lighting, heating or other building purposes or machinery owned, operated or used by a transportation system or by a person having the right, authority or permission to construct, maintain or operate within Ontario in, under, above, on or through any highway, lane or other public communication, public place, or public water, any structure or other thing, for the purposes of a bridge or transportation system, or for the purpose of conducting steam, heat, water, gas, oil, electricity or any property, substance or product capable of transportation, transmission or conveyance for the supply of water, light, heat, power or other service.

The Assessment Act states that land, real property and real estate include machinery (Section 1 (k) (iv)) but nowhere is it defined in the Act. The subject of machinery is a thorny one. Several definitions, some functional, some descriptive, have been given, but none has fully explained the concept of machinery as it is required by The Assessment Act. Several court cases have resulted due to the lack of a complete and comprehensive definition of machinery. A ski resort owner in the case of Alice Hill Park Ltd. and Assessment Region No. 4, Renfrew County (Co. Ct. Jan./71), attempted to have his ski

Cont'd.....



tow declared exempt as he felt that it constituted a transportation system as used in S.32(4). It was ruled that the ski tow did not constitute a transportation system in that a transportation system provides service to the public. The ski tow was for the transportation of skiers using the appellant's private property as an incident of that particular user rather than for a service to the public. The exemption was denied.

Machinery used for manufacturing purposes which result in the change of raw materials to new forms of articles for use is exempt. Two cases, City of London v. John Labatt Ltd. (1953) O.R. 800 and Ford Motor Co. of Canada Ltd. and Town of Ford City (1929), 63 O.L.R. 410, have helped to establish this fact. When faced with a question of an exemption under S.3 Para. 17, the assessor should refer to the Act and to case law for direction. Even so, each case rests on its own particular merits.

17a Machinery and equipment used for the production of electric power for sale to the general public is exempt.

2.2.9 Forestry Purposes of Farms, Mineral Land and Minerals, and Machinery of Telephone and Telegraph Properties  
Section 3(18, 19, 20).

The lands used for forestry purposes on farms in one municipality under a single ownership ( 1 acre in ten but not more than twenty acres) are exempt.

Buildings and plants under mineral land, and machinery under, in or on mineral land used for obtaining minerals from the ground are exempt. All the machinery, plant and appliances used



exclusively by any telephone or telegraph purposes are exempt.

2.2.10 Farm Lands Exempted for Certain Expenditures Section 29

A municipality may pass annually before March 1 a by-law exempting or partially exempting farm lands of not less than five acres which are held and used by any one person situate in the municipality if these lands do not receive the benefits of municipal services, so long as the proper notice is given.

2.2.11 Exemption of Farm Lands in Police Villages Section 30

Section 29 applies to a police village so that farm lands situate therein may be exempted or partly exempted from taxation in the same manner, to the same extent, and for the purposes mentioned in that section.

The board of trustees of a police village have the power to pass such a by-law so long as the proper notice is given.

2.2.12 By-laws and Agreements Fixing Assessments or Granting Exemptions Section 80

The authority that gave the municipalities the right to fix assessments or exempt properties was revoked by an amendment to The Municipal Act in 1961. However, Private Acts have been subsequently passed which have allowed municipalities to make agreements with property owners fixing the assessment or





granting full exemption for a limited period of time. Section 80 precludes The Assessment Act from affecting the property and exemption provisions of other statutes, by-laws and agreements. Two examples of this type of Act may be cited.

- (1) The Town of Wallaceburg Act, S.O. 1962-63 C.195.  
The council of the Town of Wallaceburg may with the consent of the electors qualified to vote on money by-laws, grant a fixed assessment of \$32,000 (covering both real property and business assessment) in each of the years 1961 to 1970 inclusive to Wally Enterprises Ltd., and the taxes in the years 1961 to 1970 inclusive for both municipal and school purposes shall be based on this amount of \$32,000, but such fixed assessment shall not include local improvement rates.
- (2) The City of Hamilton Act, S.O. 1914, C.72 re: Hamilton Amateur Athletic Association.  
The city council agreed to remit the taxes (other than school taxes, local improvement rates, special rates and water rates) upon the lands owned by the Association subject to certain terms and conditions.



#### 2.2.13 Private Acts Granting Exemptions

There is a myriad of Private Acts which grant exemptions, too numerous to list here. They range from Acts limiting assessments on international bridges to Acts exempting Y.M.C.A.'s.

#### 2.2.14 The \$2,500 Freeze Section 87

No amendment shall be made to the assessment or collector's roll pursuant to clause a of Section 43 until the cumulative value of the increase since the 23rd day of July, 1971, is at least in the sum of \$2,500 at market value or, if the assessment in the vicinity is at less than market value, at an equivalent rate.

Prior to Bill 87, June 1974, the freeze, insofar as Section 87 relates to an addition to the collector's roll under Section 43, was due to expire January 1, 1975. However, it appears now that the freeze has been extended indefinitely.

#### 2.2.15 Conventional Exemptions

These exemptions have no specific Acts authorizing such practices, however such real properties as ethnic group meeting places are generally exempted by practice established over the years.

#### 2.2.16 Religious Institutions Section 4

The council of any local municipality may pass by-laws exempting from taxes, other than school taxes and local improvement rates, the land of any religious institution named in the by-law, provided that the land is owned by the



institution and occupied and used solely for recreational purposes, on such conditions as may be set out in the by-law.

2.2.17 Navy League Section 6

The council of any local municipality may pass by-laws exempting from taxes, other than school taxes and local improvement rates, the land belonging to and vested in the Navy League of Canada under such conditions as may be set out in the by-law, so long as the land is occupied and used solely for the purposes of carrying out the activities of the Ontario division of the Navy League.

2.3 Business Assessment Section 7

The Assessment Act not only provides a tax base for the municipalities in the form of real property assessment, but also provides for the assessment and liability of persons for business tax. Business tax is not a tax on real property but rather a tax on persons carrying on a business. The business assessment is based on a percentage of the real property assessment. Whether a business makes a profit or not is irrelevant. The assessability and category of a business must be determined. Listed on pp 32(a - e) are tables outlining the major classifications of business, the section and subsection of the Act under which they fall, the ratings to be applied to the assessment (expressed in percentages) and special provisions and relevant court decisions.



7(1) Irrespective of any assessment of lands under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this Section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by him as follows: (See PP. 32(a-e) for chart and Rating Reference).

2.4 Lands to be Assessed against Owners, Trustees, etc. Section 24.

24(1) Subject to Section 26, land shall be assessed against the owner thereof and against the tenant to the extent of the assessed value of the portion of the land occupied by the tenant.

Owners include trustees, guardians, executors or administrators.





Business Assessment Rating Summary

Business Type	Relevant Act Section	Rating	Special Provisions	Related Cases
Banks Financial Institutions	The Assessment Act 7 (1) (b)	75%	Non-profit credit union exempt; credit unions qualified as "financial business" assessable.	Re St. Mary's Parish (Kitchener) Credit Union Ltd. and Kitchener City, (H.C.J.) (1948) 2 O.R. 226 — a credit union is exempt if it is non-profit. Goderich Community Credit Union Ltd. (appellant) and William U. Vidler, Assessment Commissioner February 4, 1971 — Credit unions assessable. Re Stouffville District Credit Union Ltd. and Village of Stouffville 2 O.R. (1966) 139. Assessable if "financial business".
Billboards	7 (1) (j)	50%		
Bowling Alleys	7 (1) (j)	30%		"Bowling Alleys are land for the purpose of assessment." Metropolitan Toronto v. Eglinton Bowling Ltd. (1952) O.R. 621 (C.A.).
Brewers	7 (1) (b)	75%		Brewers treated separately under S.9 (1) (b) now 7 (1) (b). Could not be considered manufacturer under 9 (1) (e) now 7 (1) (d). Re Molson's Brewery Ltd. and Toronto Ass't Commr. (1964) 1 O.R. 217, 46 O.L.R. (2d) 604.
Business on Grant-in-lieu properties	Legal Precedent	According to business		Ottawa-Carleton and Lorne Murphy Foods Ltd. (1972) 1 O.R. 559—562.
Business Ass't Quantum	70		B.A. Quantum changes with respect to real property assessment	
Chain Stores Distribution Premises; Storage or warehouse; Rented office etc.	7 (1) (c)	Distribution Premises 75% Stores 50%	Chain retail stores defined as 5 stores in Ontario, directly or indirectly owned and controlled by the same operator, and served by same storage/dist. premises	Determination of peripheral structure, liability — Brewer's Warehousing Co. Ltd. v. Corporation of the Village of Markham. C.C.A.O. (1963) 38 D.L.R. 470 also Loblaw Groceries v. Toronto (S.C.C.) (1936) 3 D.L.R. 346; S.C.R. 249. Peripheral structures not liable to business assessment. "Distribution premises" defined.
Chain Stores, Shops & outlets	7 (1) (e)	50%	More than 5 stores/outlets except a hotel or motel	
Concentrator and Smelter	7 (1) (d)	60%	Concentrating or smelting of ore or metal is deemed to be manufacturing 3 (17)	
Crown Agents	Legal Precedent	Exempt	Exempt— But The Power Commission and other Acts cite exceptions	Re Delta Parking Systems Ltd. and Toronto (Twp) (1965) / O.R. 380, 48, D.L.R. (2d) 130; affd. (1965) / O.R. 660n. 49 D.L.R. (2d) 216n.
Department Store	7 (1) (f) (iv)	50%		



Distiller	7 (1) (a)	140%	Industrial alcohol rated at 75%	
Express Company	7 (1) (b)	75%		
Farms, Nursery, market garden, apiary etc.	7 (10)	Exempted		Florist not exempt. London v. Wright Flower Ltd. (C.A.O.) (1952) O.R. 457.
Insurance Company	7 (1) (b)	75%	Rental office of National Insurance Company for regional sales is assessed at 75% and not as agent.	Western Life Assurance Co. v. Toronto (C.A.O.) (1940) O.W.N. 176.
Land Company – Loaning Land Corporation	7 (1) (b)	75%		
Land, dual use	7 (9)	applicable business rate	Where land is used partly for residence, business assessment applies only to the business portion.	
Loan, trust Companies	7 (1) (b)	75%		
Manufacturer, not assessed as wholesale merchant	7 (1) (d)	60%	Retail rating applicable to portion of premise used. (section 7 (8) ). Manufacturer engaged in wholesale not to be assessed at wholesale rate.	Gas Manufacturer's retail outlet to be assessed as retail merchant. (Imperial Oil Ltd. v. Ottawa (C.A.O.) (1943) O.R. 313 (1943) 3 D.L.R. 78.)
Members Clubs		Exempt		The University Club of Toronto v. City of Toronto (1952) O.W.N. 739; (1952) O.R. 839; (1953) 1 O.L.P. 65.
Merchant Wholesale	7 (1) (b)	75%	Wholesale merchant defined as "merchants (who) deal with persons who buy and sell again, while retail merchants deal with customers".	Definition see Utility Paper Company Ltd. v. City of London, Assessor's Review, May, 1959, p. 9 (C.C.J.) Affirmed on appeal to O.M.B. File No. P.F.M. 6928-58. Wholesale merchants distinguished from retail merchants. Robert Steel (Canada) Ltd. v. City of Hamilton, Assessor's Review, April 1954, p. 6 Co. Ltd. 1954, Proceedings, p. 40.
Minimum Assessment	7 (11)	\$100	Where the amount of the assessment of any person assessable under section 7 would be less than \$100 he shall be assessed for the sum of \$100.	
Newspaper, Lithographer, Printer, Publisher, Photographer	7 (1) (f) (iii)	50%		
Non-Profit Organizations		Exempted		Ontario Motor League v. Toronto (1960) O.W.N. 567; (1961) O.R. 78, also Maple Leaf Services v. Essa and Petawawa, (1963) 1 O.R. 675, 37 D.L.R. (2d) 657. The Maple Leaf Services case dealt with the operation of army camp facilities.
Not Specifically enumerated business	7 (1) (i)	30 %		



Parking, Public Employee	7 (1) (i) 7 (2)	25% 25%	Rate applicable to <i>free</i> employee parking. This assessment displaces the normal business assessment applicable to the same land.	
Parking, Shared	7 (3)	25%	Shared parking assessed in proportion to business. However, exclusive customer parking facilities to be assessed at the same B.A. rate as business premise.	Shopping centre parking assessable if used exclusively by customers of the store. The Corporation of The City of Hamilton v. Dominion Stores Ltd. (Court of Appeal), February 6, 1962, p. 5. Common parking facilities of shopping not assessable for B.A. Greater Hamilton Shopping Centre Ltd. v. Hamilton (1960) O.W.N. 117.
Radio and T.V. Broadcasting Stations	7 (1) (f)	50%		
Pipeline, Liquid/Gas Transmission and/or distribution	7 (1) (h)	30%	Pipelines liable to assessment under s. 32 or 33 exempt from business assessment. B.A. applicable to the land of the company concerned.	
Pipeline, Transportation by manufacturer	7 (5)	30%		
Preponderating or chief Business	7 (7)	Applicable rate of chief business	Preponderating business may be determined on the basis of turn over quantum, but the onus of proof is on appellant.	Oxford Co-operative Co. Ltd. v. The Township of Oxford (1953) O.W.M. 323 (O.M.B.) 1953 proceedings. For onus stipulation see Robert Simpson Co. Ltd. et al v. Township of Teck. (1953 O.W.M. 360 affd. at 365 (O.M.B.) 1954 Proceedings, p. 39.) Township of Coleman Case. FRITZ SCHULLER AND THE REG. ASS'NT *16 AND THE CORP. OF THE TOWN OF COLLINGWOOD (O.M.B. 1972. R8479)
(more than one business)	7 (7)	Applicable Business Rate	Rating applied according to nature business types involved.	
Professional Practitioners	7 (1) (f)	50%	Includes barrister, physician, consulting engineer, advertising agent, financial and business agents, etc.	Insurance agent's residence used for business. Held assessable because address and telephone advertised. Grant Small v. Town of Ingersoll Co. Ltd. <i>Municipal World</i> , 1948, p. 131; see also Town of Geraldton v. Eddy & Pile, <i>ibid</i> , Feb. 1949, p. 41. Agents residence exempt from B.A. if his business is transacted. Sherk et al and Town of Fort Erie (1949) O.W.N. 481 (Co. Ltd.) Assessor's Review June 1949. 1950 proceedings, p. 16.
Rooming House, Farmers etc.	7 (10)	Exempt		Florist assessable for B.A. London v. Wright Flowers Ltd., (C.A.O.) (1952) O.R. 457. Method of business immaterial in respect to land used for farm, market garden or nursery purposes. Dale Estates Ltd. v. Brampton (C.A.O.) (1958) O.W.N. 919.
Telephone or Telegraph, Transportation companies, light, heat, or power companies	7 (1) (g)	30%		
Unprofitable Business Liable		Applicable Business Rate		Liability for B.A. does not depend on whether or not a profit is being made. Ontario Jockey Club v. Toronto (1934) S.C.R. 223, p. 229.



TABLE II

**Business Assessment****Rating Reference****The Assessment Act, R.S.O. 1970, c. 32, section 7.**

Accountant . . . . .	50%
Advertising agent . . . . .	50%
Agent . . . . .	50%
Architect . . . . .	50%
Assessment less than \$100, to be assessed at \$100	
Assignee . . . . .	50%
Auditor . . . . .	50%
Automobile manufacturer (see Sec. 7(D)) . . . . .	60% & 75%
Automobile rental business . . . . .	30%
Bank . . . . .	75%
Banker . . . . .	75%
Barber shop . . . . .	30%
Barrister . . . . .	50%
Billboards . . . . .	50%
Boarding stable . . . . .	30%
Brewer . . . . .	75%
Brewer's agent . . . . .	50%
Builder's supplies . . . . .	30%
Business not specifically mentioned . . . . .	30%
Car park, supervised unimproved land . . . . .	25%
Improved land . . . . .	25%
Employees only . . . . .	25%
Department store, customers . . . . .	25%
Shopping centre parking area . . . . .	25%
Public garage, parking or storage . . . . .	25%
Chain stores, distributors to certain . . . . .	75%
Chiropractor . . . . .	50%
Civil engineer . . . . .	50%
Club proprietary . . . . .	30%
Coal dealer (retail) . . . . .	30%
Commercial, business agent . . . . .	50%
Concert hall . . . . .	30%
Concentrator or smelter . . . . .	60%
Consulting engineer . . . . .	50%
Contractor . . . . .	50%
Conveyancer . . . . .	50%
Co-operative cold storage plants . . . . .	30%
Corporations, land loaning . . . . .	75%
Dentist . . . . .	50%
Department store . . . . .	50%
Distiller . . . . .	140%, 75%
Electrical engineer . . . . .	50%
Electric railways, certain . . . . .	30%
Electric transmission . . . . .	30%
Employment agent . . . . .	50%
Engineer . . . . .	50%
Entertainment, house of public . . . . .	30%
Express company Railway or Steamship . . . . .	75%
Express company agent . . . . .	50%
Financial agent . . . . .	50%
Financial business . . . . .	75%
Fishing (commercial) . . . . .	30%
Flour miller (See Sec. 7 (d)) . . . . .	60%
Fuel oil dealer . . . . .	30%
Gas transmission . . . . .	30%
Garage business only . . . . .	30%
Gasoline manufacturer's storage premises . . . . .	60%
Heat transmission . . . . .	30%
Hotel . . . . .	30%
House of public entertainment . . . . .	30%
Hydro-electric commission . . . . .	30%
Insurance agent, from residence . . . . .	50%
Insurance company . . . . .	75%
Jockey club . . . . .	30%





Land company . . . . .	75%
Letting of vehicles for hire . . . . .	30%
Light, heat or power . . . . .	30%
Lithographer . . . . .	50%
Livery . . . . .	30%
Loan company . . . . .	75%
Loaning land corporation . . . . .	75%
Lumber dealer (retail) . . . . .	30%
Lumber storage . . . . .	30%
Malting house . . . . .	60%
Manufacturer [See Sec. 7 (D)] . . . . .	60%
Manufacturer, wholesaling goods of manufacture . . . . .	75%
Mechanical engineer . . . . .	50%
Medical electrician . . . . .	50%
Miller . . . . .	60%
Mining engineer . . . . .	50%
Minimum business assessment \$100.00 . . . . .	
Motels . . . . .	30%
Newspaper publisher . . . . .	50%
Notary public . . . . .	50%
Oculist . . . . .	50%
Oil transmission . . . . .	30%
Osteopath . . . . .	50%
Photographer . . . . .	50%
Physician . . . . .	50%
Place of amusement . . . . .	30%
Printer . . . . .	50%
Private detective . . . . .	50%
Proprietary club . . . . .	30%
Supervised car park . . . . .	25%
Publisher . . . . .	50%
Radio broadcasting station . . . . .	50%
Railways, electric (non-municipal) . . . . .	30%
Ready-mix concrete—a manufacturer . . . . .	60%
Residence, used for certain businesses [See Sec. 7 (g)] . . . . . [depends business]	
Restaurant . . . . .	30%
Retail chain stores, distributors to . . . . .	75%
Retail coal dealer . . . . .	30%
Retail merchant, specific class of . . . . .	30%
Seed company, chief business wholesale . . . . .	75%
Service station . . . . .	30%
Skating rink . . . . .	30%
Smelters . . . . .	60%
Solicitor . . . . .	50%
Steam transmission . . . . .	30%
Storage premises of gasoline and oil manufacturers . . . . .	60%
Storage premises of tobacco manufacturers . . . . .	60%
Store, shop . . . . .	30%
Supervised car park . . . . .	25%
Surgeon . . . . .	50%
Surveyor . . . . .	50%
Telegraph company . . . . .	30%
Telephone company . . . . .	30%
Television station . . . . .	50%
Theatre . . . . .	30%
Transportation system, other than for oil or gas . . . . .	30%
Transmission of water, steam, heat, electricity . . . . .	30%
Trust company . . . . .	75%
Variety store . . . . .	30%
Veterinary . . . . .	50%
Waterworks . . . . .	30%
Wholesale merchant . . . . .	75%
Wood dealer, retail . . . . .	30%

**N.B. These percentage rates are tabulated for convenient reference only. Final authority rests with The Assessment Act, as cited.**



3.       The Assessment Roll and Collector's Roll

3.1       Assessment Roll

3.1.1     Content Section 17(1)

The content of the assessment roll is as follows:

1. A description of the property sufficient to identify it.
2. The name and surnames, in full if they can be ascertained, of all persons who are liable to assessment in the municipality whether they are or are not resident in the municipality.
3. The amount assessable against each person opposite his name and where there is both owner and tenant, both names shall be entered on the roll.
4. Whether the person is an owner or tenant.
5. Number of acres, or other measures showing the extent of the land.
6. Market value of the parcel of land.
7. Amount of taxable land.
8. Value of land if liable for school rates only.
9. Value of land exempt from taxation.
10. Assessment for real property under clauses a and c of subsection 2 of section 302 of the Municipal Act.
11. Percentage applied in determining the amount of business assessment under Section 7.



12. Residential assessment.
13. Professional and commercial assessment.
14. Manufacturing and industrial assessment.
15. Farm assessment.
16. Corporations assessment, by inserting  
the letter "C" where applicable.

3.1.2 Correction of Errors Section 41

The assessment commissioner may correct any defect, error, omission or misstatement in any assessment and alter the roll before the roll is returned. In so doing he shall deliver or transmit to the person assessed an amended notice.

3.1.3 Time for Return of Roll Sections 46(1-3), 86

The assessment shall be made between Jan. 1 and the third Tuesday following the 1st day of December, yearly. The municipal assessment roll shall be returned to the clerk not later than the third Tuesday following the 1st day of December, except for any extensions granted by the Minister.



3.1.4 Last Revised Assessment Roll Section 47

47(1) The yearly assessment roll of a municipality last returned to the clerk, when corrected and revised by the Assessment Review Court and certified by the regional registrar, is for all purposes the last revised assessment roll of the municipality.

Taxation is to be levied on the last revised assessment roll or on the assessment roll as returned: (subsections 3 & 4).

3.1.5 Annexed Areas Section 48(1)

The assessment roll pertaining to lands which have been annexed by one municipality to another after the return of the latter municipality's assessment roll is to be used by the municipality to which the land has become annexed for taxation in the first year in which the lands are assessed.

3.1.6 Roll to be Binding Section 53

The assessment roll although subject to section 47(5,6) is to be valid and binding on all parties concerned after it has been revised by the Assessment Review Court and certified by the regional registrar.





3.1.7 Roll as Evidence Section 54

The copy of any assessment roll or any portion of any assessment roll, certified by the clerk of the municipality as a true copy shall be received as prima facie evidence (evidence good and sufficient on its face) in any court without proof of the signature or production of the original assessment roll.

3.1.8 The Roll in Court Section 56

The assessment roll and all papers and writings in the custody of the person in charge of the roll are to be produced for the court in relation to any appeal from the Assessment Review Court to the County Judge.

3.1.9 Alterations to the Roll

The assessment roll is to be altered by the clerk of the municipality after the decision of the Assessment Tribunals and Courts.

- (1) Assessment Review Court - Section 52(13)
- (2) County Judge - Section 62(1)
- (3) Ontario Municipal Board - Section 63(10)
- (4) Supreme Court or County Court - Section 68.



3.1.10 Assessment Roll and Business Assessment

Roll Alterations                      Section 70

70 - Where the assessment of any real property is altered on an appeal or in an action, any assessment based on the assessed value of such real property shall be altered in the business assessment roll by the clerk of the municipality to conform with the altered real property assessment.

3.1.11 1970 Assessment Roll              Sections 85, 86

The 1970 Assessment Roll shall be the assessment for the years 1970 - 76 inclusive.

3.2            Collector's Roll

Once the assessment roll is turned over to the clerk of the municipality; revised by the Assessment Review Court and certified by the regional registrar it then becomes the basis upon which to levy taxes. It is now the Collector's Roll.

3.2.1        Lands Omitted from the Collector's Roll

Section 42

Where land liable for assessment or any business assessment has been omitted from the collector's roll, either for the current year or for either or both of the next two preceding years the clerk shall enter such lands on the collector's roll as well as for the arrears of the preceding year or years



if any. Taxes that would have been payable if the assessment had not been omitted shall be levied and collected.

3.2.2 Additions to the Collector's Roll  
Section 43

Section 43 allows for additions to the collector's roll of any new structures, altered or enlarged structures, formerly exempt properties, properties ceasing to be assessed as provided in sub-section 3 of S.27, persons liable for business assessment and the increase in value of any pipeline that ceases to be entitled to the reduction provided for in Section 33(9). The additions to the collector's roll must be made before the last day of the taxation year for which taxes are levied. The amount of taxes shall be the amount that would have been levied for the portion of such taxation year left remaining after the change occurred. (Section 43 is qualified by S.87 which limits additions to the roll of improvements in the amount of \$2500 or more at market value.)

In Marathon Realty Co. Ltd. and the City of Galt O.R. 1973 Vol.3 page 253, C. of A. and C.C.J., the topic of occupancy arose in which Marathon Realty, the owner of the office building in question, claimed that the portion of the building not occupied by tenants, should not be assessed until so occupied. The judge ruled that the word occupancy does not necessarily refer to tenants in this legislation. Since the owner occupied the building in a legal sense the building



should be assessed. The court concluded that it "would be unusual if an owner could withhold rentable property from assessment rolls at its discretion."

4. Assessment Notices

4.1 Notice of Assessment - Section 40

The assessment notice is a summary of all the relevant information that is contained in the assessment roll pertaining to a given property. A notice is sent to every assessed person in a municipality, informing him of the assessment levied against him, the time within which, and to whom, he may appeal the assessment. The procedural requirements of the assessment notice are stipulated under section 40.

"The assessment commissioner or an assessor, shall, at least fourteen days prior to the completion of the assessment roll" ensure that assessment notices are delivered/mailed to all assessed persons in the municipality regardless of whether they are residents or not. The fact that the notice was delivered/mailed constitutes prima facie evidence of delivery.

40(5) The assessment commissioner or an assessor shall deliver with the notice required by subsection 1, or publish in a





newspaper having general circulation in the municipality in which the land assessed is situated, a notice setting forth,

- (a) the last day for appealing the assessment;
- (b) the times and places where the assessment roll may be examined and discussed with the assessment commissioner or an assessor;
- (c) any significant and unusual change in the amount of the assessment; and
- (d) any other information which, in the opinion of the assessment commissioner, is desirable, but any failure to send such notice does not affect the validity of any assessment.

The necessity for the assessment notice is obvious; however, there have been cases where the method of delivery was questioned. In Ruth Smith and Town of Whitby O.M.B. File No. N-5047-63, the appellant claimed that she had not received her notice through a fault in the Post Office and therefore, the provisions of the then Section 43 (now section 40) were not met. The Board ruled:

In the Board's opinion, once it is proved the notice is properly addressed, then there can be no question but that it is delivered as soon as it is mailed, and any loss resulting from an error of the Post Office must fall on the ratepayer.



#### 4.2 Supplementary Assessment Notices Section 44

For every omission from the roll (section 42) and additions to the collector's roll, (section 43), a notice shall be sent to the person assessed setting out the amount assessed and the time limit for any appeal.

#### 4.3 Assessment Notices for Annexed Areas Section 48(2)

Once lands have been annexed the municipal clerk shall deliver or send by registered mail assessment notices to every person assessed in respect of the lands annexed, setting out the amount of the assessment and rights of appeal.

### 5. Appeals

#### 5.1 Rights of Appeal Section 47(5)

Any person who is assessed in Ontario has the right to appeal the assessment on any grounds whatsoever, so long as the complaint or appeal is lodged within the time limits set by law.

#### 5.2 Ways of Appeal

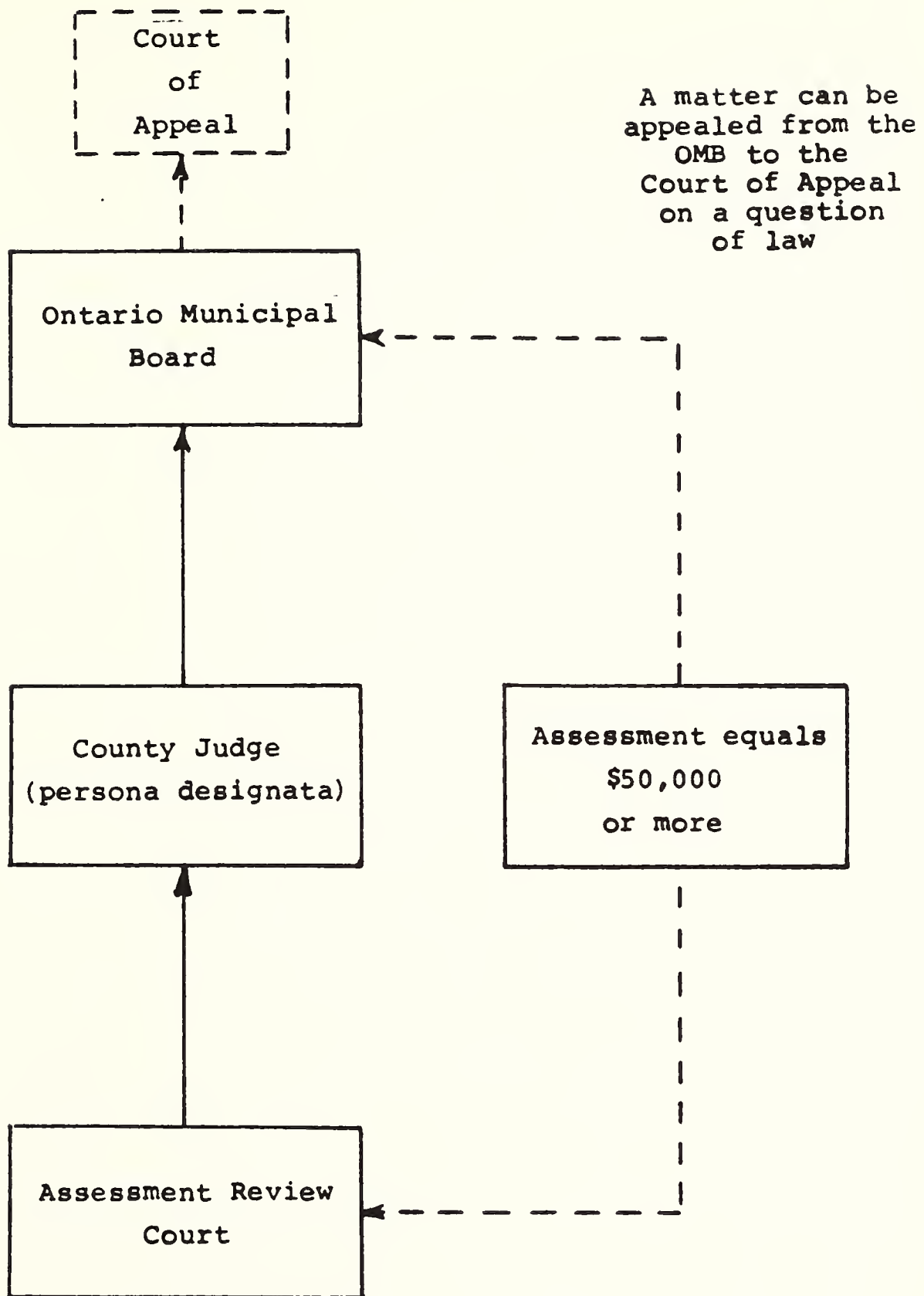
There are two main routes a complainant/appellant may follow. If the dispute is over assessment quantum (question of fact) then the complainant initiates his action through the tribunal system - Section 52. Should the question be one of



law (assessability) the applicant applies to the Supreme Court or County Court by means of originating notice (section 66). The following chart may help explain the two channels.



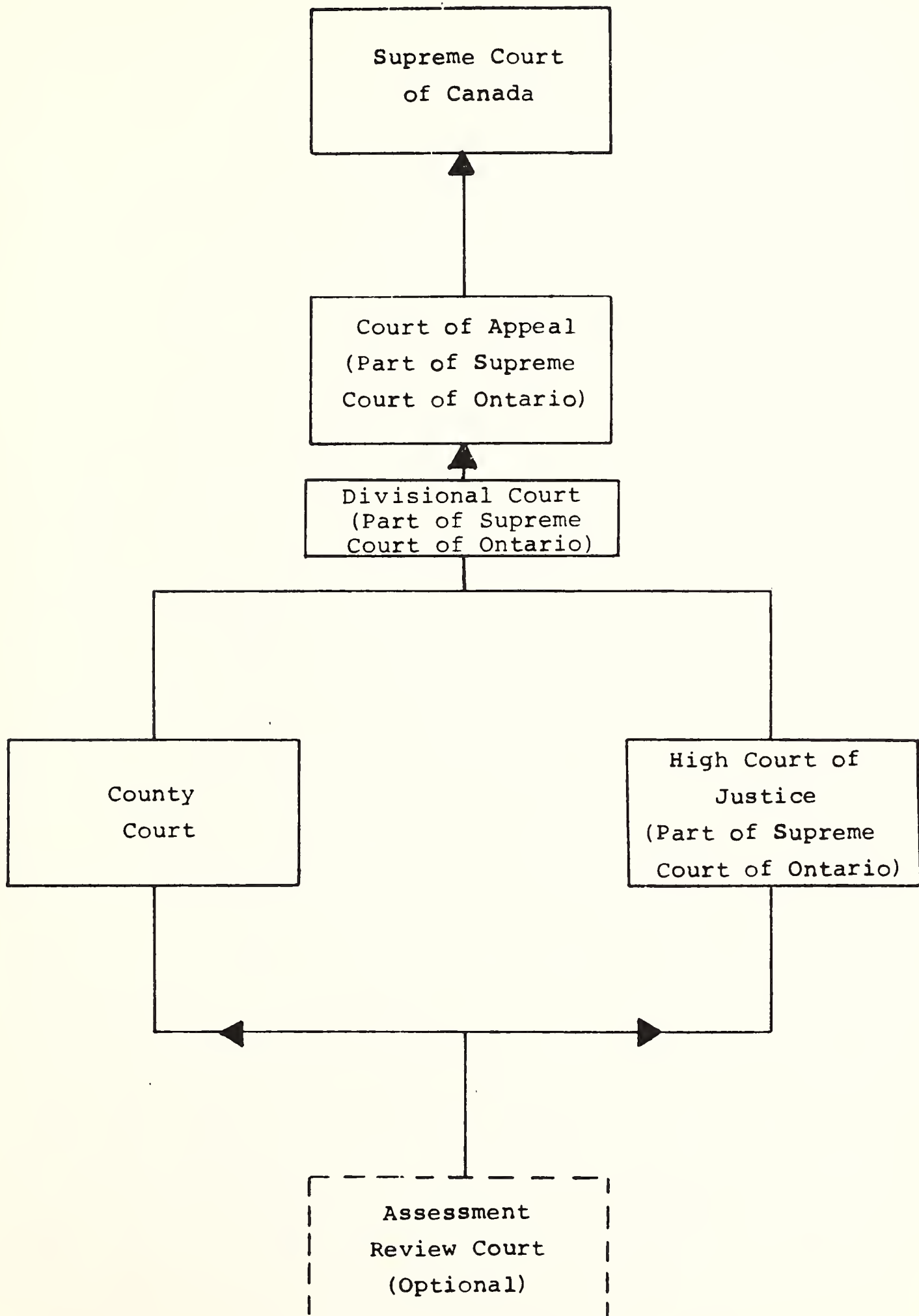
## QUESTIONS OF FACT







## QUESTIONS OF LAW





5.2.1 Questions of Fact

5.2.1.1 The Assessment Review Court (cf. The Assessment Review Court Act for Structure

All questions of fact begin with the Assessment Review Court.

52(1) Any person complaining of an error or omission in regard to himself, as having been wrongly inserted in or omitted from the roll or as having been assessed too low or too high by the assessor in the roll, may personally or by his agent give notice in writing to the regional registrar of the Assessment Review Court that he considers himself aggrieved for any or all of such causes, and shall give a name and address where notices can be served by the regional registrar as provided by subsection 4.

Section 52 goes on to say that any person, municipality or school board may register a complaint in writing with the regional registrar of the Assessment Review Court concerning any other property in the municipality in matters of quantum assessments. In other words, a property taxpayer has the right to appeal another person's property if he feels that the other person is being underassessed or overassessed in relation to his own property or if someone has been omitted from the roll. However, notice of complaint must be given within the time constraints as set out in Section 52(3).



The regional registrar shall give notice to the complainants of time and location of the hearings (section 52 (4, 6-10) ). When the A.R.C. has heard and decided a complaint a notice of such decision shall be sent to the complainant who, thereupon, has the right to appeal the decision to the County Judge (section 52 (14) ). When the amount of assessment in question is \$50,000 or more then the complainant may appeal directly to the Ontario Municipal Board (section 52(15) ). The rights of appeal also apply to any supplementary notices:

- (a) omission from the roll - Section 42
- (b) additions to the collector's roll - section 43.

As soon as practicable after the return of the assessment roll in a municipality, the Assessment Review Court shall hear and dispose of all appeals of assessments for the year for which the roll is returned, and when the appeals have been disposed of by the Assessment Review Court, the regional registrar of the Assessment Review Court shall certify the assessment roll to be the last revised assessment roll of the municipality for the year for which the assessments thereon are made. (S.46(4) )

Anyone dissatisfied with the decision of the Assessment Review Court may appeal to the County Judge for redress provided that he does so within the prescribed time limit. This right also extends to those who are refused a hearing



by the Assessment Review Court, or for neglect or omission were not heard by that body. Notices of date, time and place of hearing are to be sent to appellants.

The County Judge is in a somewhat peculiar position in that he is a persona designata - i.e. he acts in his capacity as an independent third person and not in his official capacity as a county court judge appointed under S.96 of The British North America Act. He may not rule on questions of law when he sits as persona designata although he is qualified to do so. Before 1950, county judges did rule on questions of law in a dispute of quantum assessment; however, the case Quance v. Ivey, [1950] O.R. 397 (Ont. C.A.) changed this when the Ontario Court of Appeal stipulated that Assessment Tribunals could not determine questions of law.

The county judge has the power to compel the attendance of all concerned parties and the production of any books, papers, tools and documents pertaining to the case.

When the county judge has decided an appeal, a notice of decision must be sent to the appellant. The appellant then has the right to appeal the decision to the Ontario Municipal Board within twenty-one days of the mailing (Section 62(2)).

#### 5.2.1.3 The Ontario Municipal Board Section 63

Appeals to the O.M.B. are handled in much the same way as in the case of the County Judge with the exception





that this is the final level of appeal for quantum assessments.

5.2.1.4 Powers and Functions of Tribunals  
Section 65

(1) Upon a complaint or appeal with respect to an assessment, the Assessment Review Court, county judge or Ontario Municipal Board may review the assessment and, for the purpose of such review, has all the powers and functions of the assessor in making an assessment, determination or decision under this Act, and any such assessment, determination or decision made on review by the Assessment Review Court, county judge or Ontario Municipal Board shall, except as provided in subsection 2, be deemed to be an assessment, determination or decision of the assessor and has the same force and effect.

(2) A decision of the Assessment Review Court, county judge or Ontario Municipal Board with regard to persons alleged to be wrongfully placed upon or omitted from the assessment roll or assessed at too high or too low a sum is final and binding unless appealed in accordance with the provisions of this Act.

(3) For greater certainty, it is hereby declared that the provisions of section 52, 55 and 63 respecting appeals are intended to establish machinery for the review of an assessment for the purpose of ensuring the administrative integrity of the assessment roll, and, except as provided in subsection 2, such provisions shall not be deemed to affect the right of any person to apply to a superior, county or district court for a judicial determination of any question relating to an assessment. R.S.O. 1970, c.32, s.65.



5.2.1.5 Limitations of Actions in Court  
Sections 67, 69

The appeal time limits are set under these sections.

5.2.1.6 Assessment May Be Open Upon Appeal  
Section 64

(1) Upon an appeal on any ground against an assessment, the Assessment Review Court, county judge or Ontario Municipal Board hearing an appeal under section 63, or the Court of Appeal, as the case may be, may reopen the whole question of the assessment so that omissions from, or errors in the assessment roll may be corrected, and the amount for which the assessment should be made, and the person or persons who should be assessed therefore, may be placed upon the roll, and if necessary the roll of the municipality, even if returned as finally revised, may be opened so as to make it correct in accordance with the findings made on appeal.

(2) In determining the value at which any land shall be assessed, reference may be had to the value at which similar lands in the vicinity are assessed. R.S.O. 1970, c. 32, s.64.



5.2.1.7 Cancellations, Reductions and Refunds  
of Taxes The Municipal Act Section 636(a)

Any property owner wishing to apply for cancellation, reduction or a refund in taxes (real property or business) may do so to the municipal council for a number of reasons: demolition, fire, termination of business, sickness, extreme poverty, just to name a few. The levels of appeal are:

- (1) Municipal Council
- (2) Assessment Review Court
- (3) County Judge
- (4) Ontario Municipal Board

and similar procedures for appeals apply as in the case of appeals under The Assessment Act.

5.2.1.8 Gross and Manifest Errors The Municipal  
Act Section 636(b)

When a gross and manifest error (clerical or typographical error) has been discovered by the municipal treasurer by which the property owner is undercharged, he may recommend to the municipal council that the taxes be increased. The same appeal procedures exist as for 636a.

5.2.2 Question of Law (Assessability) Section 66

Should a question of law arise, any municipal corporation, assessment commissioner, or person assessed may apply to the Supreme Court or County Court in which the assessment is



made by means of originating notice in order to have the question resolved. Once a decision has been reached and the interested parties notified, it may be appealed to the Divisional Court of the Supreme Court of Ontario. Under certain circumstances the Divisional Court decision may be appealed to the Court of Appeal.

If the Court of Appeal is of the opinion that a question of law ought to be submitted to the Supreme Court of Canada, as the highest court in the land, it can grant leave to appeal to that Court for a decision. Should the Court of Appeal refuse to grant such a leave, it is also possible to obtain special leave from the Supreme Court of Canada, and the matter may still be heard.

Many cases brought to the courts by means of originating notice have been cited in this book. Virtually all persons or incorporated bodies which seek exemptions travel this route as they must do. However, the questions of fact and law are not often clearly defined. It is quite common for a case to be processed through the tribunal stages only to find its way to the Court of Appeal for a ruling and then referred back to the O.M.B. for final ruling in the light of the Court of Appeal decision.

## 6. Acquisition and Disclosure of Information

The Assessor is in a somewhat privileged position in society. He is one of the few individuals who has





the right of access to all real property in Ontario. Right of access also entails responsibilities and discretion should be used.

6.1 Right of Access to Property and Information  
Sections 13, 14, 15 and 16

In order to gain information about property and produce quality assessments the assessor must have the right to physically inspect real property and question the owners or tenants of the real property in question. The Assessment Act, under Sections 13 - 16, provides this authority for assessors and also prescribes penalties for those assessed who do not comply with reasonable requests.

6.2 Disclosure of Information by Assessor under  
ss. 13 & 14 - Sections 78, 79

By the same token information given to the assessor is confidential and is not to be disclosed to any person or persons other than those legally entitled to it, e.g., a court of law. Wrongful disclosure of information may lead to a fine, prison term or both and it leaves the way open to a damage suit against the assessor.



6.3 Access to Assessment Roll - Municipal Act  
Section 216

Since the assessment roll is a public document all persons have a right to view it at "all reasonable hours".

(216) (1) Except as otherwise provided in any Act, any person , at all reasonable hours, may inspect any records, books, accounts and documents in the possession or under the control of the clerk, except inter-departmental correspondence and reports of officials of any department or of solicitors for the corporation made to council, board of control or any committee of council, and the clerk within a reasonable time shall furnish copies of them or extracts therefrom certified under his hand to any applicant on payment at the rate of 10 cents for every 100 words or such other rate as the council may fix.

6.4 Enumeration Information Section 23

Each year a census is taken under the auspices of the Assessment Division. Between the Tuesday following the first Monday in September and the thirtieth of September all inhabitants are counted and school support determined. The enumeration also offers an excellent opportunity to update assessment rolls.

7. Related Acts - See Appendix I

Although the assessor's authority is primarily derived from The Assessment Act there are many Acts that influence



him as well. An assessor should be aware of the relevant sections of these affiliated Acts in order to discharge his responsibilities more completely. Appendix I presents the more salient Acts that bear directly on the assessor's function.

#### 8. Assessment Case Digest

There has been a demonstrated need over the past several years for a systematic arrangement of court cases relevant to our assessment function. The Assessment Standards Branch was given the task of devising a system that would give the assessor access to court decisions in the briefest possible time. The Standards Branch responded by producing the Assessment Case Digest. Each Regional Office has at least one set.

The full texts of cases are sent to each Regional Office and the cases are indexed according to their alphabetical order, topic, geographical region and section of *The Assessment Act* with which they deal.

All cases listed in the index system have been key-worded; i.e., the salient words of the case have been isolated; e.g., market value, occupancy, etc. The Case Digest is updated every three months and new indexes are forwarded to Regional Offices on that basis.

It is hoped that assessors will find the system a useful and complementary tool in the discharge of their responsibilities.



(i)

Appendix I

Statute	Relevant Sections	Details of the Section
Agricultural Societies Act, R.S.O. 1970, C. 15; amended 1971, Vol. 2 c. 50; amended 1974, c. 46	1(e) 28	definition of Society exemption from taxation
Assessment Review Court Act, S.O. 1972, c. 111 amended 1973, c. 107	All	A.R.C. is continued under the auspices of Ministry of the Attorney General. The Act comprises the provisions of the former Sections 50 and 51 of the Assessment Act.
Beds of Navigable Waters Act, R.S.O. 1970, c. 41	1	grant from Crown of land bordering on navigable waters does not include the bed of such waters
Cancer Act, R.S.O. 1970, c. 55; amended 1972, c. 1	s.1, 16	definition of Foundation and Institute
Amended 1972, c. 34	s.15, 28	exemption from property business tax
Cemeteries Act, R.S.O. 1970, c. 57; amended 1972, c. 1,	1(b)	definition of a cemetery for purposes of s. 3.3, Assessment Act
Charitable Institutions Act, R.S.O. 1970, c. 62 Supplement (1971) to R.S.O. 1970, c.50, amended 1971, vol. 2. c 503, ; amended 1972 c. 61; amended 1973, c. 24	1(a), 2, 3	definition of a charitable institution for the purpose of s. 3.12, Assessment Act





(ii)

Statute	Relevant Sections	Details of the Section
Condominium Act, R.S.O. 1970, c. 77 (as amended 1972); amended 1973, c. 121, amended 1974, c. 133	1(e), (1)(n),	definition of common elements, owner, property, units and declaration, useful for the purpose of ascertaining the nature of the interest to be assessed
Crown Timber Act, R.S.O. 1970, c. 102, amended 1971, vol. 2, c. 23; amended 1972, c. 4; amended 1972, c. 26	9	nature of the interest of licensee under the Act relevant for purposes of assessability
Education Act, 1974 S.O. 1974 c. 109, amended 1975, c. 77; amended 1976, C.50	216	additional duties of assessor in the preparation of the assessment roll under s. 17(1) of The Assessment Act.
Hotel Registration of Guests Act, R.S.O. 1970. c. 212	1	definition of a hotel for the purposes of s.7(1(a)), Assessment Act
Housing Development Act, R.S.O. 1970, c. 213; amended 1972 c. 129; amended 1974, c. 31, amended 1976, c.44	6(7)	certain lands exempt from taxation
Juries Act, 1974, c. 63 amended 1975, c. 25	2-11	qualification and selection of jurors based upon the most recent census under s. 23 of The Assessment Act
Local Improvement Act R.S.O. 1970 c. 255; amended in 1972, c. 47; amended 1976, c. 10	1(26) 52(2)	significant change in definition of "value", eliminating the requirement that separate values for lands and buildings be obtained for local improvement petitions.



Statute	Relevant Sections	Details of the Section
Local Roads Board Act, R.S.O. 1970, c. 256; amended 1971, vol. 2, c. 98	19, 20	provisions for the assess- ment and taxation of land in a local road area as defined by the Provincial Land Tax Act
Municipal Act, R.S.O. 1970, c. 284	Part I, 14(14)	applicability of s. 29, Assessment Act granting an exemption from taxation
Amended 1971, vol. 2, cc. 81, 98	Part II, and Part III (amended 1972)	use of census figure and assessment rolls prepared by the assessor under The Assessment Act for the purposes of municipal elections
Amended 1972 cc. 121, 124, 169		
Amended 1973, cc. 83, 175	Part XII, s. 287	definition of rateable property for the purpose of Municipal Act and Assessment Act
Amended 1974, cc. 3, 85, 136		
Amended 1975, cc. 8, 56		
Amended 1975 (2nd Sess.) cc. 11, 20	Part XIII (amended 1971,72)	provisions respecting the levying of taxes generally outlines the power of municipality to regulate
Amended 1976, cc. 51, 69	Part XIX (amended 1971,72)	by bylaw activities carried on within the municipality
	Part XXIV (amended 1972)	levying of municipal tax on the whole of the assessment for real property and provisions respecting persons liable for payment of taxes; collection procedures for arrears in taxes; cancella- tions reductions, refunds, etc. of taxes; increase of taxes where gross error
Municipal Affairs Act R.S.O. 1970, c. 118 amended 1972, cc. 1, 46, 104 amended 1974, c. 111	1  55(1)	definition of those agencies entitled to an exemption under s. 3.9, Assessment Act, rights of the Ministry of Revenue to appeal re: matters of assessment



(iv)

Statute	Relevant Section	Details of the Section
Municipal and School Tax Credit Assistance Act, R.S.O. 1970, c. 285	1-4	provides for tax credit for residential and farm properties owned by persons over 65
Municipal Elections Act, S.O. 1972, c. 95 Amended 1974, c. 32; amended 1975, c. 23	18, 21, 44(7)	preliminary list of electors  list delivered to clerk
Municipal Health Services Act, R.S.O. 1970, c. 290 amended 1971, vol. 2. c. 98	6, 8	specific duties of the assessor re: the collection of certain required information
Municipal Tax Assistance Act, R.S.O. 1970, c. 292 amended 1975, c. 33	all	valuation and methods prescribed for some types of property within a municipality owned by the Province for the purpose of grants in lieu of real property taxes
Municipality of Metropolitan Toronto Act, R.S.O. 1970, c. 295 amended 1971, vol. 2, cc. 7, 80, amended 1972, cc. 54, 89, 168 amended 1973, cc. 48, 171 amended 1974, cc. 42, 114 amended 1975, cc. 22, 50 amended 1976, cc. 42, 72	Part II, 26  27  115  204(4, 5)  207  208(10)	definition of a School Board for the purpose of s.s. 52, 55 and 63, Assessment Act bylaws of Toronto and Etobicoke re: certain exemptions from taxation exemption from taxation of property owned by the T.T.C., and also exemptions from taxation under s. 35 of Assessment Act exemption from taxation of land vested in the Conservation Authority which are managed by Metropolitan Toronto exemption from taxation re: lands used by the C.N.E. section 3.9, Assessment Act does not apply to lands used by the O'Keefe Centre use of



(v)

Statute	Relevant Sections	Details of the Section
	Part XVII	assessment rolls of area municipalities for the purpose of levying sums to meet expenditures of Metro
	252.1	Metropolitan Toronto Corporation deemed a municipality for the purpose of ss. 3.9, 35, Assessment Act
	252(2)	definition of Occupant purposes of s. 3.9, Assessment Act where the property is owned by Metropolitan Toronto
Planning Act, R.S.O. 1970, c. 349 Amended 1971, vol. 2, c. 2; amended 1972, c. 118; amended 1974, c. 53; amended 1975 (2nd Sess.), c. 18 amended 1976 cc. 38, 64	7(1)     8(9)	use of information by a member or employee of a planning board, gathered by an assessor cross-reference to s.72 Assessment Act, providing for reimbursement to a county for expenses incurred in a joint planning area
Power Corporation Act, R.S.O. 1970, c. 354 amended 1973, c. 57	1(c)	definition of a commission exemption from taxation
Ontario Unconditional Grants Act S.O. 1975, c. 7	7, 9-18	provides for the levying of sums necessary to pay regional levy based on the assessment as contained in the assessment roll





Statute	Relevant Sections	Details of the Section
Provincial Land Tax Act, R.S.O. 1970, c. 370 (as amended 1971)	1(d)(g), 3 4 (1-4) 15-20	definition of land and owner liable to tax method of assessment of land in an unorganized territory and provision re: assessment appeals
Supplement (1971) to R.S.O. 1970, c. 50; amended 1972, c.7.; Amended 1973, c. 135	18(4) (4-6)	

See generally, the various statutes establishing regional governments and the provisions therein relating to the use of the assessment rolls of unit municipalities.

The Regional Municipality of Durham Act, 1973, S.O. 1973,  
c. 78; amended 1973, cc. 147, 168, 176; amended 1974,  
cc. 5, 117; amended 1976, cc. 43, 70.

The Regional Municipality of Haldimand-Norfolk Act, 1973  
S.O. 1973, c. 96; amended 1973, c. 155; amended 1974,  
cc. 5, 10, 117; amended 1975; c. 46; amended 1976, cc. 43, 70.

The Regional Municipality of Halton Act 1973 S.O. 1973,  
c. 70; amended 1973, cc. 162, 168; amended 1974,  
cc. 5, 117; amended 1976, cc. 43, 70.

The Regional Municipality of Hamilton-Wentworth Act, 1973,  
S.O. 1973, c. 74; amended 1973, cc. 163, 168; amended  
1974, cc. 5, 117; amended 1976, cc. 43, 70.



District Municipality of Muskoka Act, R.S.O. 1970,  
c. 131; amended 1971, vol. 2, c. 76; amended 1973,  
c. 52; amended 1973, cc. 146, 168; amended 1974,  
cc. 119, 128; amended 1976, cc. 55, 71;

The Regional Municipality of Niagara Act R.S.O. 1970  
c. 406; amended 1971, vol. 2, c. 77; amended 1972,  
c. 51; amended 1973, cc. 54, 158, 168; amended 1974,  
cc. 30, 117; amended 1975, c. 46; amended 1976, cc. 43, 70;

Regional Municipality of Ottawa-Carleton Act, R.S.O.  
1970, c. 407; amended 1971, vol. 2, c. 74; amended  
1972, c. 126; amended 1973, cc. 138, 168; amended 1974,  
cc. 5, 67, 117; amended 1975, c. 46; amended 1976, cc. 43, 70;

The Regional Municipality of Peel Act, 1973, S.O. 1973,  
c. 60; amended 1973, cc. 161, 168; amended 1974,  
cc. 5, 117; amended 1975, c. 46; amended 1976, cc. 43, 70;

Regional Municipality of Sudbury Act, 1972, S.O. 1972,  
c. 104; amended 1972, c. 167; amended 1973, cc. 139,  
168; amended 1974, cc. 54, 117; amended 1975, c. 46  
amended 1976, cc. 43, 70;

City of Timmins - Procupine Act, 1972, S.O. 1972, c. 113;  
amended 1972, c. 154; amended 1973, c. 127

Regional Municipality of Waterloo Act, 1972, S.O. 1972,  
c. 105; amended 1972, c. 164; amended 1973, cc. 137,  
168; amended 1974, cc. 5, 44, 117; amended 1975, c. 46;  
amended 1976, cc. 43, 70;



Regional Municipality of York Act, R.S.O. 1970,  
c. 408; amended 1971, vol. 2, c. 75; amended  
1972, cc. 78, 153; amended 1973, cc. 156, 168;  
amended 1974, c. 117; amended 1975, c. 46; amended  
1976, cc. 43, 70.

Village of Point Edward Act, 1972, S.O. 1972, c. 87

Village of Wasaga Beach Act, 1972, S.O. 1972, c. 88.



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